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THE UNITED REPUBLIC OF TANZANIA



No. 5 of 1999

Benjamin	I ASSENT W. Mkapa
	President
15th Ma	4, 1999.

[.....]

An Act to provide for the management and administration of land in villages, and for related matters.

ENACTED by the Parliament of the United Republic of Tanzania.

PART I PRELIMINARY

1.-(1) This Act may be cited as the Village Land Act, 1999.

Short title and commencement

(2) This Act shall come into operation on a date which the Minister may, by notice published in the *Gazette*, appoint and the Minister may appoint different dates for different Parts.

Interpretation

2. In this Act, unless the context otherwise requires-

"adjudication officer" means a person appointed to be an adjudication officer under section 56 of this Act;

"certificate of approval to a derivative right" means a certificate granted under section 31 of this Act;

"Certificate of customary right of occupancy" means a certificate issued under section 29 of the Land Act, 1999;

"certificate of village land" means a certificate issued under section 7 of this Act;

"Commissioner" means the

Commissioner of Lands
appointed under section 9 of
the Land Act, 1999;

"communal rights of way" has the meaning ascribed to it by section 157 of the Land Act"

"communal village land" has the
meaning ascribed to it by section
13 of this Act;

"Constitution" means the Constitution of the United Republic of Tanzania, 1977;

"customary law" has the meaning ascribed to it by the Interpretation of Laws and General Clauses Act, 1972;

Cap.1

"customary lease" means a lease the
mode of creation and incidents
of which including its
termination are governed by
customary law;

"customary mortgage" means a
mortgage the mode of creation
and incidents of which are
governed by customary law;

"customary right of occupancy" means
right of occupancy created by
means of the issuing of a
certificate of customary right of
occupancy under section 27 of
this Act and includes deemed
right of occupancy;

"Court" means any body established by or under any written law, which is referred to in section 167 of the Land Act as having jurisdiction to hear and determine land disputes;" "derivative right" means a right to
occupy and use land created out
of a right of occupancy and
includes a lease, a sub-lease, a
licence, a usufructuary right and
any interest analogous to those
interests;

"deemed right of occupancy" means
the title of a Tanzanian citizen of
African descent or a community
of Tanzanian citizens of African
descent using or occupying land
under and in accordance with
customary law;

"disposition" means, in relation to a right of occupancy any sale, mortagage, transfer, grant, partition, exchange, lease, assignment, surrender or disclaimer and includes the creation of an easement, usufructuary right or other servitude or any other interest in a right of occupancy or a lease and any other act by an occupier of a right

of occupancy or lease whereby his rights over that right of ocupancy or lease are affected and includes an agreement to undertake any of the disposition so defined";

"district authority" means a district council, a township authority or a village council;

"district adjudication" has the meaning ascribed to it under section 56;

"Gazette" has the meaning ascribed to it by the Interpretation of Laws Act, No. 32 of 1972;

"general land" means all public land which is not reserved land or village land;

"hazard land" means land declared to

be hazard land under section 6 of
this Act:

"joint village land use agreement"

means the agreement

made, adopted and

approved under section 11 of
this Act;

"land" includes the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to land;

"Land sharing arrangement" means a land sharing arrangement prepared under section 58;

"lender" means a person to whom a
mortgage has been given as
security for the payment of an
advance of money or money's
worth or to secure a condition;

"lessee" means a person to whom a
lease is granted and includes a
person who has accepted a
transfer or assignment of a lease;

lessor" means a person by whom a
lease is granted and includes a
person who has accepted the

transfer or assignment of the reversion of a lease;

"lien" means the holding by a lender of
any document of title relating to
a right of occupancy or a lease as
security for an advance of
money or money's worth or
the fulfilment of a condition;

"local government authority" means a district authority or an urban authority;

"Minister" means the Minister for the time being responsible for land;

"mortgage" means an interest in a right
of occupancy or a lease securing the payment of money or
money's worth or the fulfilment
of a condition and includes a sub-mortgage and the instrument
creating a mortgage;

"notice of temporary assignment"

means a notice issued under

section 43 of this Act;

"non-village organisation" means an organisation referred to by section 18 of this Act;

"order of abandonment" means an order made under section 45 of this Act and includes a provisional and a final order of abandonment;

"order of temporary assignment" means an order issued under section 43 of this Act;

"Operation Vijiji" means and includes the settlement and resettlement of people in villages commenced or carried out during and at any time between the first day of January, 1970 and thirty first day of December, 1977 for or in connection with the purpose of implementing the policy of villagisation, and includes the resettlement of people within the same village, from one part of the village land to another part of that village land or

from one part of land claimed by any such person as land which he held by virtue of customary law to another part of the same land, and the expropriation of it in connection with Operation Vijiji so defined;

"public land" means and includes all the land of Tanzania;

"register" means a register

prescribed under section 21 of
this Act for the recording of
rights and interests in and
dispositions of and in
connection with customary

rights of occupancy;

"reserved land" means land referred to
by section 7 of this Act;

"right of occupancy" means a title to
the use and occupation of land
and includes the title of a

Tanzanian citizen of African
descent or a community of

Tanzanian citizens of African descent using or occupying land in accordance with customary law;

"spot adjudication" has the meaning ascribed to it by section 49 of this Act;

"supervision order" means an order issued under section 42 of this Act:

"transfer land" means general or reserved land which is to be transferred to become a part of village land;

"unexhausted improvement" means any
thing or any quality permanently
attached to the land directly resulting from the expenditure of
capital or labour by an occupier
or any person acting on his behalf and increasing the productive capacity, the utility, the sustainability or the environmental
quality thereof and includes trees,

standing crops and growing produce whether of an agricultural or horticultural nature;

"village" means a village registered as such under the Local Government (District Authorities) Act 1982;

"villager" means a person ordinarily
resident in a village or who is
recognised as such by the village
council of the village concerned;

"village adjudication" means the

process of adjudication provided

for by sections 51 to 55 of this

Act;

"village adjudication adviser" means
the person appointed to be a
village adjudication adviser
under section 52 of this Act;

"village adjudication committee"

means the committee

established under section 53 of

Act No.7 of 1982 this Act;

"village assembly" has the meaning ascribed to it by the Local Government (District Authorities) Act 1982;

"village council" has the meaning ascribed to it by the Local Government (District Authorities) Act, 1982;

"village land" means the land declared
to be village land under and in
accordance with section 7 of
this Act and includes any
transfer or land transferred to a
village;

"Village land Council" means the village land council established under section 60;

"village register" means the register of interests and rights in village land kept in accordance with section 21 of this Act;

Act No. 7 of 1982

Act No.7 of 1982 "village transfer land" means village
land which is to be transferred
to become part of general or
reserved land.

PART II

APPLICATION OF FUNDAMENTAL PRINCIPLES OF THE NATIONAL LAND POLICY

Fundamental principles

3.-(1) The fundamental principles of National Land Policy which are the objectives of the Land Act, 1999 to which all

persons exercising powers under, applying or interpreting this Act are to have regard to are-

- (a) to make sure that there is established an independent, expeditious and just system for adjucation of land disputes which will hear and determine land disputes without undue delay;
- (b) to recognise that all Land in Tanzania is public Land vested in the President as trustee on behalf of all citizens:

- rights in and recognized long standing occupation or use of Land are clarified and secured by the law;
- (d) to facilitate an equitable distribution of and access to land by all citizens;
- (e) to regulate the amount of land that any one person or corporate body may occupy or use;
- (f) to ensure that land is used productively and that any such use complies with the principles of sustainable development;
- (g) to take into account that an interest in land has value and that value is taken into consideration in any transaction affecting that interest;

Act No. 47 of 1967

- (f) to pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act, 1967;
 - (i) to provide for an efficient, effective, economical and transparent system of Land administration;
 - (j) to enable all citizens to participate in decision making on matters connected with their occupation or use of land;

- (k) to facilitate the operation of a market in Land:
- (1) regulate the operation of a
 market in Land so as to
 ensure that rural and urban
 small-holders and
 pastoralists are not
 disadvantaged;
- (m) to set out rules of Land Law accessibly in a manner which can be readily understood by all citizens;
- (n) to establish an independent,
 expeditious and just system
 for the adjudication of Land
 disputes which will hear
 and determine cases
 without undue delay;

- (o) to encourage the dissemination of information about land administration and Land Law as provided for by this Act through programmes of public and adult education, using all forms of media.
- (2) The right of every woman to acquire, hold, use and deal with land shall to the same extent and subject to the same restriction be treated as the right of any man, is hereby declared to be law.

PART III

TRANSFERS AND HAZARD LAND

Transfer of village land to general or reserved land

- 4.-(1) Where the President is minded to transfer any area of village land to general or reserved land for public interest, he may direct the Minister to proceed in accordance with the provisions of this section.
- (2) For the purposes of subsection(1), public interest shall include investments of national interest.

- (3) The Minister shall cause to be published in the *Gazette* and sent to the village council having jurisdiction over the land which is the subject of the proposed transfer, hereinafter called 'village transfer land' a notice specifying-
 - (a) the location of the area of the village transfer land;
 - (b) the extent and boundaries of the village transfer land;
 - (c) a brief statement of the reasons for the proposed transfer;
 - (d) the date, being not less than ninety days from the date of the publication of the notice, when the President may exercise his power to transfer the land or a part of it.

- (4) Where any portion of the village transfer land has been allocated to a villager or a group of villagers under a customary right of occupancy or a derivative right or a person or a group of persons to use the land, the village council shall inform those villagers or, where any one of those villagers is absent, a member of the family occupying or using the land with that villager, of the contents of the notice.
- (5) Any person referred to in subsection (3) may make representations to the Commissioner and to the village council on the proposed transfer of the land and the persons to whom those representations are made shall take them into account in any decisions or recommendations that they may make on the proposed transfer.

- (6) Where the village transfer land
- is-
- (a) less than 250 hectares in extent, the village council shall prepare and submit recommendations for the proposed transfer to the village assembly for it to approve or refuse and the village assembly shall, meeting under section 103 (3) of the Local Government (District Authorities) Act, 1982, consider the recommendations of the village council and any representations made by the district council of the area where the land is situate, and decide whether to approve or refuse to approve the proposed transfer;
- (b) greater than 250 hectares, the Minister shall, after considering any recommendations made by the village assembly through the Village Council, district council and any representations on the matter made by the village and district councils of the area where the land is situate, by resolution, signify his approval or refusal to approve

the proposed transfer.

- authorized officer shall be under a duty to attend a meeting of the village council or village assembly as the case may be to explain the reasons for the proposed transfer and answer questions thereon and any person who or a representative of any organisation which is proposing to use and occupy the village transfer land under a right of occupancy may, at the invitation of the village council or village assembly as the case may be, address the meeting and answer questions if any about the proposed use of the land.
- (8) No village transfer land shall be transferred-
 - (a) until the type, amount,
 method and timing of the
 payment of compensation
 has been agreed upon
 between-
 - (i) the village council and the Commissioner; or

- (ii) where subsection
 (3) and (9) apply,
 the persons referred
 to in those
 subsections and the
 Commissioner; or
- if the matters of compensation (b) referred to in paragraph (a) cannot be agreed until the High Court has agreed as an interim pending measure, final determination of the matters of compensation, to the payment of any sum on account which it thinks by proper the Commissioner to the village council and to the persons referred to in subsection (3) as the case may be; or
- (c) if general or reserved land is to be exchanged with the village transfer land, that general or

and is ready to be transferred to the village.

- (9) Where the relevant body under subsection (5) has, by resolution, approved the transfer of the village transfer land or a part of it, the President may exercise his power to transfer that village land or a part of it to general or reserved land.
- or any part of it is occupied by persons to whom subsection (3) applies, the President shall, where he is minded to exercise his power to transfer that land to general or reserved land, determine whether those persons may continue to occupy and use the land, subject to any terms and conditions, which he may impose, or whether the rights of those persons shall be compulsorily acquired, subject to the payment of compensation.

- (11) The President may direct that any compensation payable under this section shall be paid by the person to whom or an organisation to which the village transfer land which has been transferred to general land is granted by a right of occupancy.
- (12) The President may direct the Minister to appoint an inquiry under section 18 of the Land Act into a proposed transfer and where that inquiry has been appointed, no further action in accordance with this section shall be taken on that proposed transfer until after the inquiry has reported.
 - (13) A transfer of village land to general or reserved land shall be notified in the *Gazette* and shall come into effect thirty days after the date of the publication of the notice.
- shall be in addition to any provisions in any Ordnance or Act referred to in section 6 of the Land Act, 1999 which set out the manner in which land is brought under any of those Ordinances or Acts and any powers which may be exercised under any of the provisions of those Ordinance or Acts shall be exercised in a manner which will ensure that the provisions of this section are complied with.

Transfer of general or reserved land to village land

5.- The President may direct the transfer of any area of general or reserved land to village land subject to the provisions of Section 6 of the Land Act, 1999.

Declaration of hazard land

- 6.-(1) The Minister may declare any area of a village land to be hazard land subject to the provisions of subsection (3).
- (2) Notwithstanding the provisions of subsection (1), any local authority having jurisdiction in any village may advise the Minister to declare any of the Village Land as hazard Land if in its opinion it is necessary to do so.
- (3) For purposes of this Section, hazard land is land the development of which is likely to pose a danger to life or to lead to the degradation of or

environmental destruction on that or contiguous land and includes but is not limited to-

- (a) mangrove swamps and coral reefs;
- (b) wetlands and offshore islands in the sea and lakes;
- (c) land designated or used for the dumping of hazardous waste;
- (d) land within sixty metres
 of a river bank or the
 shoreline of an inland
 lake;
- (e) land on slopes with a gradient exceeding any angle which the Minister shall, after taking account of proper scientific advice, specify;
 - (f) land specified by the appropriate authority as land which should not be developed on account of its fragile nature;

- (g) land specified by the appropriate authority as being land which should not be developed on account of its environmental significance.
 - (4) The declaration of any land to be hazard land shall be in accordance with the provisions of this section.
 - (5) Where the Minister considers that an area of land should be declared to be hazard land, in this section referred to as 'proposed hazard land' he shall publish a notice in the *Gazette* specifying-
 - (a) the location of the proposed hazard land;
- (b) the boundaries and extent
 of the proposed hazard
 suousiganos of the proposed hazard
 land;
 - (c) a brief statement of the reasons for the proposed declaration;

- than sixty days from the date of the publication of the notice, when the declaration may be made.
 - (6) A copy of the notice referred to in subsection (5) shall be-
 - (a) served on all persons
 occupying and using the
 proposed hazard land in a
 manner and form as will
 be understandable to
 those persons;
- (b) on all local authorities

 having jurisdiction in the

 area of the proposed hazard

 land;
- (c) put up in conspicuous
 places within the area of
 the proposed hazard land.

- (7) All persons and authorities on whom a notice has been served and all persons on whom and organisations on which a notice should have been served but was not and any other person or organisation with an interest in land may, within not less than thirty days after the date of the service of the notice, make representations to the Commissioner on the proposed declaration and the Commissioner shall be under a duty to head and record the representations and take them into account in determining whether to recommend to the Minister that the land or any part of it be declared to be hazard land
- (8) Where the Minister, after considering a report prepared by the Commissioner under subsection (7) determines that the proposed hazard land or a part of it shall be declared to be hazard land, he may, subject to subsection (9), make a declaration accordingly.

- (9) Where the proposed hazard land or a part of it is occupied and used by any person under a granted or customary right of occupancy, the Minister shall, if he considers that that land or a part of it should be declared to be hazard land, report the matter to the President.
- (10) The President may, after considering the report of the Minister, declare any land to which subsection (9) applies to be hazard land and any such declaration shall operate to compulsorily acquire, subject to compensation, any right of occupancy in that land.
- (11) A notice of a declaration of hazard land shall be published in the *Gazette* and shall come into force thirty days after the date of the publication of the notice.

PART IV VILLAGE LANDS

A: Management and Administration

Village land

7.-(1) Village land shall consist

of-

(a) land within the boundaries
of a village registered in
accordance with the
provisions of section 22 of
the Local Government
(District Authorities) Act,
1982;

Act No.7 of 1982

(b) land designated as village land under the Land Tenure (Village Settlements) Act, 1965;

Act No.27 of 1965

(c) land, the boundaries of which have been demarcated as village land under any law or administrative procedure in

Act comes into operation whether that administrative procedure based on or conducted in accordance with any statute law or general principles of either received or customary law applying in Tanzania and whether that demarcation has been formally approved or gazetted or not;

- (d) land, the boundaries of which have been agreed upon between the village council claiming jurisdiction over that land and -
 - (i) where the land surrounding or

contiguous to that
village is village
land, the village
councils of the
contiguous village;

- (ii) where the land surrounding or contiguous to that village is general land, the Commissioner; or
- surrounding or contiguous to that village is reserved land, the official or public organisation for the time being responsible for that reserved land; or
- (iv) where the land

which is claimed as a part of the land of, or is surrounding or contiguous to, that village is land which has been declared to be urban land or peri-urban land, the local authority having jurisdiction over that urban land or peri-urban land; or

(v) where the land which is claimed as a part of the land of or is surrounding or contiguous to that village is land which is occupied and used

used for depasturing cattle belonging to villagers or to persons using that

Vinkreneura bal

by a person or body under a right of occupancy, that person or body;

- (e) land, other than reserved land, which the villagers have been, during the twelve years preceeding the enactment of this Act regularly occupying and using as village land, in whatever manner such persons or the village assembly or village council were allocated such land including land-
 - (i) lying fallow at any time during the said preceding twelve years;

land is unable to agree with or is in dispute with a person or body referred to in paragraph (c) of subsection (l) as to the boundaries of the land which it is claiming or occupying and using as

by a person or body
under a right o

cattle belonging to
villagers or to
persons using that
land with the
agreement of the
villagers or in
accordance with
customary law;
land customarily

(iii) land customarily

- used for passage or land used for depasturing cattle.
- (2) Where a village claiming or occupying and using land as village land is unable to agree with or is in dispute with a person or body referred to in paragraph (c) of subsection (1) as to the boundaries of the land which it is claiming or occupying and using as

village land, or wishes to determine the boundaries of the land it is occupying and using in accordance with paragraph (d) of subsection (1), the Minister shall, on being satisfied that every effort has been made to try and reach an agreement on the boundaries either-

(a) appoint a person to act as a mediator between the village and the person or body with which the village unable to is reach agreement, the function of that person shall be to work with and persuade the village authorities and that person or body to reach a compromise over boundaries; or

- (b) where the mediator reports to the Minister that despite his best endeavours, he is unable to persuade the parties to the dispute to reach a compromise on the boundaries. advise the Minister to appoint an inquiry under section 18 of the Land Act 1999 to adjudicate on and demarcate the boundaries of that village land.
- (3) An inquiry appointed under section 18 of the Land Act, 1999, to adjudicate and demarcate the boundaries of village land shall conduct such an inquiry in accordance with any specific directions and procedures set out in the document

appointing the person or persons to conduct that inquiry.

- (4) Where the Minister has exercised any of his powers under subsection (2), all parties to a dispute shall forth with refrain from taking any action which may or is calculated or likely to affect the outcome of the dispute and where any party to a dispute takes such action, the mediator or as the case may be the inquiry shall hold that action against the party that took it in conducting the mediation or as the case may be in determining any recommendations at the conclusion of the inquiry.
- (5) The Minister shall, unless there are overriding reasons of public interest to the contrary, accept the recommendations of the inquiry

appointed under paragraph (b) of subsection (2) as to the boundaries of the village land which was the subject of the inquiry.

- issue to every village in respect of which the boundaries to village land have been demarcated or agreed in accordance with the provisions of this section or under any law or administrative procedure referred to in this section, a certificate of village land in the prescribed form.
 - (7) A certificate of village land shall-
- (a) be issued in the name of the President;
- (b) confer upon the village council the functions of management of the village

land;

- (c) affirm the occupation and use of the village land by the villagers under and in accordance with the customary law applicable to land in the area where the village is situate;
- pastoralists or have a predominantly pastoral way of life, shall affirm the use, for purposes of depasturing cattle, of land other than village land which is customarily so used by those persons.
- (8) It shall be the responsibility of the village council of the village to which a certificate of village land has

been granted to maintain and at all times to keep secure that certificate of village land.

- (9) Where the boundaries of any village land are altered or amended, the Commissioner shall direct the village council of the village, the boundaries of whose land has been altered to send the certificate of village land to the Commissioner for endorsement on that certificate of the alteration or amendment of the boundaries and the village council shall comply with that direction.
- (10) The Commissioner shall maintain a register of village land in accordance with such rules as may be prescribed.
- (11) References to the boundaries of village land in this Part

shall be to general boundaries.

(12) A certificate or other document of registration issued to any village registered under the provisions of section 22 of the Local Government (District Authorities) Act, 1982 shall, where the Ministry responsible for Lands approves that it satisfies the conditions for the grant of certificate of Village Land, have the same effect and force as regards village land as a certificate of village land issued to a village under this section.

Act. No. 7 of 1982

village land

- Management of 8.-(1) The village council shall, subject to the provisions of this Act, be responsible for the management of all village land.
 - (2) The Village council shall exercise the functions of management in

accordance with the principles applicable to a trustee managing property on behalf of a beneficiary as if the council were a trustee of, and the villagers and other persons resident in the village were beneficiaries under a trust of the village land.

- (3) In the management of village land, a village council shall have regard to-
 - (a) the principle of sustainable development in the management of village land and the relationship between land use, other natural resources and the environment in and contiguous to the village and village land;

- (b) the need to consult with and take account of the views and, where it is so provided, comply with any decisions or orders of any public officer or public authority having jurisdiction over any matter in the area where the village land is;
- take account of the views of other local authorities having jurisdiction in the area where the village land is.
- establish a committee to advise and make recommendations to it on the exercise of any of the functions of the management of village land but, not withstanding the provisions of section 108 of the Local Government (District Authorities) Act, 1982, such committee shall have no power to take any decisions concerning the management of village land.

Act No. 7 of 1982

- (5) A village council shall not allocate land or grant a customary right of occupancy without a prior approval of the village assembly.
 - (6) A Village Council shall-
 - (a) at every ordinary meeting of the Village Assembly, report to and take account of the views of the Village Assembly on the management and administration of the Village land; and
 - (b) brief the Ward Development Committee and the District Council, having jurisdiction in the area where the village is situated on the management of the village land;
 - (7) The Commisioner may give any advice, either generally to all village councils or to a specific village council on the management of village land which he considers necessary or desirable and all village councils to which that advice is given shall have regard to that advice.

- (8) Where on a complaint made to a district council by a village assembly or by not less than one hundred villagers that the village council is not exerising the function of managing village land in accordance with this Act and other laws applying to village land or with due regard to the principles applicable to the duties of a trustee, the district council shall inform the Commissioner of the matter and subject to any agreement he may make with that district council, the council shall either,
 - (a) advise the complainants to amicably settle the matter with the machinery of village or other local government authority to resolve the issue; or
 - (b) through a full meeting of the district council, use its best endeavors to resolve the issue and advise the village council as to its future conduct of the management of village land or;
 - (c) request the Commissioner to issue a directive to the village council on the management of that village land which that village council shall be required to comply with; or

- (d) recommend to the Commissioner on the appointment of an inquiry under section 18 of the Land Act, 1999, to investigate the complaint and make recommendations on it."
- (9) An inquiry appointed under paragraph (d) of subsection (7) may recommend to the Minister that the management of the village land be removed from the jurisdiction of the village council the subject of the inquiry either for a fixed or an indeterminate period and transferred to either-
 - (a) the district council having jurisdiction in the area where the village whose village council is being inquired into is situate; or
 - (b) the Commissioner.

- inquiry, determines that the village council has taken or omitted to take any action on village land which is contrary to law, the Commissioner shall take all such action as may be necessary to re-establish the lawful management of that village land and the proper allocation of interests in that village land.
- (11) The Minister may, in consultation with the Minister responsible for local government, by regulations, make arrangements for the management of village lands jointly between-
 - (a) two or more villages; or
 - (b) between one or more village and the district council having jurisdiction in the area where the village or villages which

are to be part of an arrangement of joint management are situate; or

village and an urban authority within whose boundaries that village or those villages are situate,

and that arrangement may provide for the Commissioner to be involved in that joint management of village land.

aggrieved by the management of village land by a village council, including management by a village council as part of any arrangement for joint management has standing to sue that village council in respect of the management of that village land.

Advice by the District Council

- 9.-(1) A district council may provide advice and guidance to any village council situate within its area of jurisdiction concerning the administration by that village council of village land, either in response to a request for that advice and guidance from a village council or of its own motion and any village council to which that advice and guidance is given shall have regard to that advice and guidance.
- (2) No advice and guidance given by a district council shall contradict or conflict with any directive or circular issued by the Commissioner under subsection (3) of Section 11 of the Land Act, 1999.

Conflict of interest

10.-(1) Where any matter concerning land in which any member of the village council exercising functions under this Act or any member of his immediate family has an interest is allocated to, referred to or otherwise comes

to that member of the Village Council for his advice, assistance or decision that member shall not exercise any function under this Act in respect of that land.

- (2) For the purposes of this section "immediate family" means, in relation to a person, any other person in third of a closer degree of affinity or consanguinity and where any person refferred to has more than one spouse, shall include all such persons to the fourth or closer degree of affinity thereto.
- (3) Where a conflict of interest arises in respect of administration of village land, any member of a village council who or a committee of the council dealing with land which is covered by that description shall declare his conflict of interest and shall take no further part nor attend any meeting of the village council or its committee where the land the subject of the conflict of interest is on the agenda, and any person who fails to declare that conflict of interest or who

contravenes this provision shall render himself liable to disciplinary proceedings applicable to a member of the viliage council.

Joint village land use agreements between villages

11.-(1) In the exercise of the powers of management, a village council shall have power to enter into an agreement, to be known as a joint village land use agreement with any other village council concerning the use by any one or more groups of persons, of land traditionally so used by those groups, being the Land which is partly within the jurisdiction of one village and partly within the jurisdiction of another village with which an agreement is to be entered into and that agreement may be amended, modified or varied from time to time.

- (2) Where an agreement which is referred to in subsection (1) is to be entered into, the village councils proposing to enter into that agreement shall-
 - (a) first, convene one or more meetings of the groups of persons using the land which is to be the subject of the agreement
 - opportunity to make representations about their use of land and the content of any agreement about that use;
 - (ii) explain the nature,
 purpose and
 proposed content of
 that agreement to
 those groups;

- (b) second, prepare a draft agreement which shall take account of any representations made at any meeting convened under subparagraph (i) of paragraph (a);
- third, inform the district (c) council or district councils having jurisdiction in the area where the land covered by the proposed agreement is located of the contents of the draft agreement;
- (d) fourth, place that draft agreement before a meeting of the village assembly of each of the villages proposing to enter into an agreement for the approval of each such village assembly.

- (3) An agreement made in accordance with this section shall not take effect unless and until it is approved by each village assembly of the villages proposing to enter into that agreement.
- (4) An agreement made under and in accordance with this section may include matters concerning-
 - (a) the boundaries of the land covered by the agreement;
 - (b) the use of the land, or parts of it, by different groups of persons, and the periods of time when that group may so use the land or part of it including arrangement for the dual use of land or part of it by one or more group of persons using that land for different purposes at the same time;

- (c) the nature and scope of any rights to or interests in land recognised by the rules of customary law applicable to the land covered by the agreement, and where more than one set of rules of customary law are applicable to that land, the manner of resolving any conflict between the sets of rules;
 - (d) the manner of resolving disputes about the use of the land covered by the agreement;
- (e) any other matters which may be prescribed or which the village councils shall consider necessary and desirable.

- (5) An agreement reached by villagers of two or more villages about the use, by those villagers jointly of village land which falls within the jurisdiction of two or more villages or an agreement reached between the traditional leaders of a group of persons using village land which falls within the jurisdiction of two or more villages and the village councils of those villages may be adopted and approved as a joint village land use agreement by the village assembly of the village of those villagers or, as the case may be, of that village council.
- jurisdiction in the area where the land covered by a proposed agreement is located may require the village council to place any comments which that district council may have about the proposed agreement before the meeting of the village assembly called to approve the agreement.

Division of village land

12.-(1) A Village land shall be divided into-

land which is occupied (a) and used or available for occupation and use on a community and public basis, to be known as communal village land, by all villagers and any other persons who are, with the agreement of the village council, living and working in the village whether those persons are occupying and using village land under a derivative right or not and that communal village land shall not be made available for individual

occupation and use by any person through a grant of a communal or individual customary right of occupancy or a derivative right or any other disposition;

- (b) land which is being occupied or used by an individual or family or group of persons under customary law; or
- (c) land which may be made available for communal or individual occupation and use through allocation by the village council in accordance with the provisions of this Part.
 - (2) A Village land referred to in

paragraphs (b) and (c) of subsection (1) may be made the subject of a grant, in accordance with the provisions of this Part, by a village council to the occupier of that land or a citizen who is a villager or a group of citizens who are villagers or any other citizens who may be provided for in this Part, of a customary right of occupancy, by means of a document to be known as a 'certificate of customary title'.

(3) A Village land referred to in paragraph (c) of subsection (1) may be made the subject of a derivative right granted by a village council in accordance with the provisions of this Part.

- Communal 13.-(1) The village council shall village land recommend to the village assembly what portions of village land shall be set aside as communal village land and for what purposes.
 - (2) The recommendations of the village council may be put forward as-
 - (a) a land use plan for the village or part of it; or
 - (b) specific recommendations on specific portions of village land; or
 - (c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).
 - (3) The District Council shall provide advice and guidance to village councils on the exercise of their functions under this section.

- (4) A village council shall, when exercising functions under this section, have regard to any advice and guidance provided under subsection (3).
- (5) On receipt of the recommendations of the village council under this section, the village assembly shall-
 - (a) approve;
 - (b) approve with amendments;
 - (c) refer back for further consideration; or
 - (d) reject,

the recommendations and where the village assembly rejects the recommendations, the village council shall bring forward, as soon as may be,

different recommendations.

- (6) The village council shall maintain a register of communal village land in accordance with any rules which may be prescribed.
- (7) Any land which has been set aside by a village council or village assembly for community or public occupation and use or any land which is and has been, since the formation of the village, habitually used whether as a matter of practice or under customary law or regarded by village residents as available for use as community or public land before the enactment of this Act, shall be deemed by this Act to be communal village land approved as such by the village assembly and shall be registered by the village council under subsection (6).

- (8) Where there is a dispute between a person occupying land which is claimed as communal village land under subsection (7) and the village council, the Minister may, on being satisfied that-
 - (a) the dispute cannot be resolved through the organs of village government; or
 - (b) the continuation of the dispute may lead to serious disruption in the village,

exercise his powers or direct the Commissioner to exercise his powers under the provisions of subsections (6) to (10) of section 8 of this Act in relation to that dispute.

14.-(1) Land which is or may be held for a customary right of occupancy shall be-

- (a) any village land;
- (b) any general land occupied by persons who immediately before the coming into operation of this Act held that land under and in accordance with a deemed right of occupancy.
- (2) It is hereby affirmed that, notwithstanding any of the provisions of-
 - (a) the Town and Country Planning Ordinance, and
 - (b) Part III of the Land Acquisition Act, 1967, a person who occupies land in an urban or peri-urban area after the material date of declaration of a planning area and does not occupy that land as a tenant of another person to whom the Urban Leasehold (Acquisition and Regrant) Act, 1968, could be applicable or under a granted right of oc-

Land which is or may be held for customary rights of occupancy

> Cap. 378 Act No. 47 of 1967

cupancy, occupies that land under a customary right of occupancy and shall where that land or part of it-

- (3) For purposes of sub-section (2) occupation by the family of the person claiming to have been in occupation for the specified time shall be deemed to be occupation by that person.
- (4) If any question arises as to whether a person in occupation of land is a person to whom the provisions of subsection (2) applies, that person shall be deemed to be the person unless the contrary is proved to the satisfaction of a court and he and all parties claiming under him or consistently with his occupation shall be deemed to be entitled to compensation.
- (5) Any rights in relation to land which have been determined under section 6 of the Forests Ordinance to

be lawfully exerciseable within any area declared to be a forest reserve by any person or group of persons are hereby affirmed to be and to have always been rights arising from a customary right of occupancy.

- (6) In section 8 of the

 Ngorongoro Conservation Area
 Ordinance, the reference to "land held Cap.413
 under a right of occupancy granted
 under the Land Ordinance", shall be
 deemed to include land held under a
 customary right of occupancy.
- (7) Persons who traditionally and in accordance with customary law occupied and used land in any National Park or in the land under the jurisdiction of the Ngorongoro Conservation Area Authority but who, since the enactment of the National Parks Ordinance and the Ngorogoro Cap.412 Conservation Ordinance may occupy Cap.413

that land only with the permission of or under a licence from the Director of the National Parks or the Ngorongoro Conservation Area Authority shall be deemed to occupy that land under a customary right of occupancy.

(8) Any person or group of persons occupying land under the provisions of section 5 of the Public Land (Preserved Areas) Ordinance, shall be deemed to be occupying and to have always occupied that land under a customary right of occupancy.

(9) Nothing in subsections (5), (6) and (7) shall affect the power of authorities exercising functions under the statutes referred to in those provisions from continuing to regulate the use of land by persons, who by virtue of this section, are occupying land under a customary right of occupancy.

Cap.338

15.-(1) An allocation of land made to a person or a group of persons residing in or required to move to and reside in a village at any time between the first day of January 1970 and the thirty first day of December 1977, whether made under and in pursuance of a law or contrary to or in disregard of any law, is hereby confirmed to be and to have always been a valid allocation capable of and in law giving rise to rights and obligations in the party to whom the allocation was made and extinguishing any rights and obligations vested in any person under any law which may have existed in that land prior to that allocation.

A granted right of

occupancy made to a person or group of persons residing in or required to move to and reside in a village at any time between the first day of January 1970 and the thirty first day of December 1977 whether granted in accordance with the procedures of the Land Ordinance or not, and whether registered under and in accordance with the provisions of the Land Registration Ordinance, or

Confirmation
of validity of
interests in
land created
under and by
Operation
Vijiji

Cap.113

Cap.334

not is hereby confirmed to be and to have always been from the time of the grant a valid granted right and obligations in the grantee as from the date of the grant and extinguishing any rights and obligations vested in any person under any law which may have existed in that land prior to that grant.

right of occupancy or a letter of offer of a granted right of occupancy issued by an officer authorized to do so, made to a person or group of persons residing in or required to move to and reside in a village between the first day of January 1970 and the thirty first day of December 1977, whether made in accordance with the provisions of the Land Ordinance or not, and whether registered under and in accordance with the provisions of the Registration of Documents Ordinance, or not is

Cap.113

Cap.117

hereby confirmed to be and to have always been a valid offer or as the case may be, a valid letter of offer which may, at any time before first day of January 2000, be acted upon so as to create a right of occupancy which shall be a customary right of occupancy and that customary right of occupancy shall extinguish any rights and obligations vested in any person by any law which may have existed prior to the written offer of or the letter of offer for a granted right of occupancy.

- (4) The interest in land created by an allocation of land to which subsection (1) refers and the right of occupancy to which subsection (2) refers are hereby confirmed to be and to have always been a customary right of occupancy.
- (5) A person or group of persons who, by virtue of this section occupy land under a customary right of

occupancy may, subject to and in accordance with the provisions of this Part, obtain a certificate of customary title in respect of that occupation of land.

(6) Where a customary right of occupancy confirmed by subsections (1) and (2) or capable of being created under subsection (3) is or would be held in respect of an acreage of land which exceeds the maximum acreage of village land which a person is permitted under this Act to occupy, that customary right of occupancy shall, subject to the payment of any compensation or that grant of a right of occupancy in general land which is provided for by this Part, and taking account of the views of the customary right holder as to the portion of land to be exercised as excess land, be terminated in respect of that exercised

land by the village council exercising management powers over that village land.

- granted out of a customary right of occupancy confirmed by this section is hereby confirmed to be and to have always been a valid derivative right in any manner it was created and to whom it was granted.
- in subsection (7) which conflicts with any of the provisions of this Act relating to the persons to whom, the period for which and amount of land which a derivative right granted out of a customary right of occupancy is required to comply with, may subject to the payment of any compensation which is required by this Act and any other conditions which may be

prescribed, be terminated by the village council having management powers over the land.

(9) Where there is a dispute between two or more persons, family units or groups of persons as to which of the parties is entitled to land under any of the provisions of subsections (1), (2) or (3), the village council shall

refer the matter to the Village Land Council to mediate between the parties and where the Village Land Council is unable to resolve the dispute between the parties, the village council shall refer the dispute to the Ward Tribunal and may further refer the matter to court having jurisdiction in the area where the Land is situated.

- (10) For the avoidance of doubt, this section does not apply to-
 - (a) any right to occupy or use
 any land in accordance
 with any custom or rule of
 customary law existing in
 any village which existed

before and was not established or transformed by the addition of significant numbers of persons from outside the district as a result of Operation Vijiji or in any land which was not brought within the jurisdiction of any village established as a result of Operation Vijiji.

(b) any right to occupy and use land in accordance with any custom or rule of customary law which existed prior to first day of January 1970, where that right was being exercised.

of validity of allocations of land made by since 1 January 1978

Confirmation 16. For the avoidance of doubt and in order to facilitate security of tenure and contribute to development of village land, the village councils provisions of section 15, other than subsections (2) and (3), shall apply to any and every allocation of village land made by village council or by any other authority on and after the first day of January 1978 until the date of the commencement of this Act as if for the dates referred to in subsection (1) of that section, there were substituted the dates between the first day of January 1978 and the date of commencement of this Act.

Occupation of 17.-(1) A non-village village land by organisation to which this Part applies non-village isorganisation

- (a) a government department or any office or part of it;
 - (b) a public corporation or other parastatal body or any office, part, division or its subsidiary body;
 - (c) a corporate or other body, majority of whose members or shareholders are citizens registered or licensed to operate under any law for the time being in force in Tanzania applicable that to corporate or other body which does not consist of a majority of the members of the village; or any composed similarly that subsidiary of

corporate or other body;

- (2) Where, at the commencement of this Act, any non-village organisation occupies village land under a granted right of occupancy, that granted right of occupancy shall, notwithstanding that it exists in village land, continue to be a granted right of occupancy for the remainder of its term.
- (3) Subject to the provisions of the Land Act, 1999, relating to disposition of a right of occupancy the Commissioner shall continue to be responsible for the management of the right of occupancy to which this section applies.
- (4) Where the Commissioner is satisfied that a village council is managing the village land in an

efficient manner, he may, in writing delegate his functions of managing a right of occupancy to which this section applies to that village council subject to any conditions which he shall think fit to include in the instrument of delegation.

- (5) On and after the coming into operation of this Act, a non-village organisation which wishes to obtain a portion of village land for the better carrying on of its operations may apply to the village council for that land, and the village council shall recommend to the Commissioner for the grant or refusal of such grant.
- (6) Any association of persons formed in accordance with customary law for the purpose of occupying, using and managing land or any

Cap.375

association which has come together and is recognized with the community of which it is a part as an association of persons formed to occupy, use and manage land in an Urban or periurban area, shall, if the persons forming the association registers it in accordance with the provisions of the Trustees Ordinance. Incorporation recognized as such by this Act and accordingly the provisions of that Ordinance shall apply in relation to such associations.

Incidents of of occupancy

- 18.-(1) A customary right of customary right occupancy is in every respect of equal status and effect to a granted right of occupancy and shall, subject to the provision of this Act, be-
 - (a) capable of being allocated

by a village council to a citizen, a family of citizens a group of two or more citizens whether associated together under any law or not a partnership or a corporate body the majority of whose members or shareholders are citizens;

- (b) in village land or reserved land;
- (c) capable of being of indefinite duration:
- (d) governed by customary law in respect of any dealings, between persons residing in or occupying and using land-
- having jurisdiction over that land; or
 - right of occupancy
 has been granted in

land other than
village Land,
contiguous to or
surrounding the Land
which has been
granted for a
customary right of
occupancy;

- (e) subject to any conditions
 which are set out in section
 29 or as may be prescribed
 and to any other conditions
 which the village council
 having jurisdiction over that
 land shall determine;
- (f) may be granted subject to a premium and an annual rent, which may be varied from time to time;
- capable of being assigned to a citizen or a group of citizens, and having a

residence or place of business in the village where the land is situate, or a body corporate the majority of whose shareholders or members are citizens having a place of business in that village;

- (h) inheritable and transmissible by will;
- (i) liable, subject to the prompt payment of full and fair compensation, to acquisition by the state for public purposes in accordance with any law making provision for that action.
- (2) The Minister shall make regulations prividing for an area of land which a person can hold under a single right of occupancy or derivative right of occupancy or in any way otherwise disposed of to any person or body of persons.

lease

Incidents of a 19. Subject to the provisions of Part IX of the Land Act, 1999, a lease

and a sublease granted out of a customary right of occupancy shall be called a "customary lease" and "customary sublease", as the case may be, and shall be governed by the customary law applying to the land out of which a lease or sublease, as the case may be, has been granted provided that this section shall not be taken to affect any customary leaseholds enfranchised under the Nyarubanja Tenure (Enfrachisement) Act, 1965 or the customary Leaseholds

Act No.1 of 1965

Act No.47

of 1968

(Enfranchisement) Act, 1968, or to permit or sanction the reintroduction of any form of customary leaseholds similar in nature to Nyarubanja tenure.

Law applicable to customary

20.-(1) Subject to the provisions of this Act, any matter concerning the rights and obligations of a person, or a right of group of persons occupying land under toms, traditions, and practices of the yanguoso

customary right of occupancy or of any person in dispute with any persons referred to above or of any person alleging that he or she is entitled to succeed to or otherwise occupy that land on the death or permanent incapacity of a person occupying land under a customary right of occupancy or on another matter affecting land held under a customary right of occupancy and persons ordinarily resident in the village where the land is situate shall, where that matter is not otherwise provided for under this Act or any enactment determined other accordance with customary law.

(2) Any rule of customary law and any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall have regard to the customs, traditions, and practices of the community concerned to the extent that

they are in accordance with the provisions of sections 9 and 9A of the Judicature and Application of Laws Ordinance and of any other written law and subject to the foregoing provisions of this subsection, that rule of customary law or any such decision in respect of land held under customary tenure shall be void and inoperative and shall not be given effect to by any village council or village assembly or any person or body of persons exercising any authority over village land or in respect of any court or other body, to the extent to which it denies women, children or persons with disability lawful access to ownership, occupation or use of any such land.";

Cap.453

(3) Notwithstanding the provisions of the Judicature and Application of Law Ordinance no Act of the Parliament of the United Kingdom referred to in that Ordinance shall apply to land held for a customary right of occupancy or otherwise governed by customary law.

- (4) The customary law which shall be applied to determine any matters referred to in subsections (1), (2) and (3) shall be-
 - (a) in the case of a village not established as a result of Operation Vijiji, the customary law which has hitherto been applicable in that village;
 - (b) in the case of a village established in whole or in part as a result of Operation Vijiji, the customary law applicable in the village immediately before the extinguishing of customary rights in the land under any rules or

Act No.14 of 1973

Act No.22 of 1997 regulations made under
the Rural Lands (Planning
and Utilization) Act, 1973
or the enactment of the
Regulation of Land
Tenure (Established
Villages) Act, 1992;

- (c) in the case of general land held for a customary right of occupancy, the customary law recognised as such by the persons occupying that land;
- (d) in the case of any land customarily used by pastoralists, the customary law recognised as such by those pastoralists.
- (5) The grantor and grantee of of a derivative right may stipulate as a

the law applicable to it shall be the provisions of Parts VIII which relates to dispositions affecting land and Part IX which relates to leases of the Land Act 1999 and other relevant parts of the law of Tanzania to the exclusion of customary law.

21.-(1) A village council shall maintain a register of village land in accordance with any rules which may be prescribed by the Minister and the village executive officer shall be responsible for keeping that register.

(2) The village executive officer shall not make any entry on the register in respect of any customary right of occupancy unless and until he is satisfied that any premia, rent, taxes and dues payable in respect of that customary right of occupancy or that derivative right in

Register of village land

respect of that customary right of occupancy or that derivative right in accordance with the customary rules applicable in that area have been paid and a receipt or acknowledgment for the same has been validly endorsed on the certificate of customary title or of that derivative right.

(3) A registry for the purpose of records under this section shall be a village branch of the district land registry for the district in which that village is situate and all persons working in that District Land Registry shall fall under the jurisdiction and be subject to the supervision and direction of the Registrar.

B: Grant and Management of Customary Right of Occupancy

Application for in village land

22.-(1) A person, a family unit, customary right a group of persons recognised as such of occupancy under customary law or who have formed themselves together as an association, a primary co-operative society or as any other body recognised by any law which permits that body to be formed, who is or are villagers, or if a married person who has been divorced from, or has left for not less than two years, his or her spouse, was, prior to the marriage, a villager, and all of whom are citizens, may apply to the village council of that village for a customary right of occupancy.

> A person or group of persons not ordinarily resident in a village may apply for a customary right

of occupancy.

- (3) An application for a customary right of occupancy shall be-
 - (a) made on a prescribed form;
 - (b) signed-
 - (i) by the applicant; or
 - (ii) where the application is made by a family unit, by not less than two persons from the family unit; or
 - (iii) where the application is by a group of persons recognised as such under customary law, by not less than two persons who are

recognised by that law as leaders or elders of the group; or

(iv) where the application is by a group of persons formed into association, primary operative society or a body under a law which recognises that body, by not less than two duly authorised officers; where the applicant is a person or group of persons referred to in subsection (2),

by not less than five villagers who are not related to any of those applicants; or

- (vi) a duly authorised agent of any of the applicants referred to in paragraphs (i) .to (iv);
- (c) supported by a declaration concerning any other land in Tanzania held by the applicant;
- (d) accompanied by any documents and information which may be prescribed or which the village council may require;
- (e) accompanied by any fee

which may be prescribed;

- (f) where the applicant is a person or group of persons referred to in subsection (2), accompanied by a signed and witnessed statement that the applicants intend to establish or commence the construction of their principal place of residence in the village within three months of obtaining a customary right of occupancy;
- (g) submitted to the village council or its authorized officer.
 - (4) A village council may require any applicant to submit any

further relevant information which it may specify and shall not be obliged to determine an application until that further information has been submitted or a satisfactory explanation has been submitted as to why that further information cannot be submitted.

Determination
of application
for customary
right of
occupancy

23.-(1) A village council shall, within ninety days of the submission of an application or within ninety days of the submission of further information or a satisfactory explanation for its non-availability, determine that application.

- (2) In determining whether to grant a customary right of occupancy, the village council shall-
- comply with the decisions that have been reached by

any committee or other body on the adjudication of the boundaries to and rights in the land which is the subject of the application for a customary right of occupancy;

- (b) have regard to any guidance from the Commissioner concerning an application from a non-village organisation;
- (c) have special regard in respect of the equality of all persons, such as -
- (i) treat an application from a woman, or a group of women no less favourably than

an equivalent application from a man, a group of men or a mixed group of men and women; and

- (ii) adopt or apply no adverse discriminatory practices or attitudes towards any woman who has applied for a customary right of occupancy;
- (d) where the application is from a non-village organisation, the village council shall seek guidance from the Commissioner who shall have regard to-

- (i) any advice which
 has been given to
 the application by
 the district council
 or as the case may
 be the urban
 authority having
 jurisdiction in the
 area where the
 village is situate;
 - the non-village organisation has made or has undertaken to make to the community and public facilities of the village;

- (iii) the contribution to the national economy and well-being that the development for which the right of occupancy is being applied for is likely to make;
- (iv) whether the amount of land in respect of which the nonvillage organisation is seeking a right of occupancy is so extensive or is located in such an area that it will or is likely to impede the present and future occupation and use of village land by persons ordinarily resident in the village;
- (v) any other matters which may be prescribed;
- where the application is from a person or group of persons ordinarily resident in the village, have regard to-

(e)

- the (i) where applicant already occupies village land under a customary right of occupancy whether the allocation of additional land under a customary right of occupancy would cause that applicant to exceed the prescribed amount of land which a person or group of persons may occupy in that village;
 - where the applicant (ii) already occupies under land customary right of occupancy, whether all the terms and conditions subject to which that right of occupancy is held and all other regulations relating to the use of that 111

(iii)

land have been strictly complied with and if they have not, the reasons for any non-compliance;

whether the applicant has or is likely to be able to obtain access to the necessary skills and knowledge to be able to use the land applied for productively and in accordance with the terms and conditions subject which the to customary right of

mey have or will, if the applicant dies, have, out of the land;

any other matters

occupancy will be granted and all other regulations applying to the use of the land for which the right of occupancy is being applied for;

- (iv) the extent and manner in which the applicant, if an individual, intends to make provision for any dependants that the applicant may have or will, if the applicant dies, have, out of the land;
- (v) any other matters

edgenging due ni of which may be los (iii) bas (i) prescribed;

- person or group of persons
 referred to in subsection
 (2) of section 21-
- (i) the amount and location of the land the applicant is applying for;
- which the applicant is intending to use the land and whether that purpose accords with any village development or land use plan;
- the matters referred

ed year doidw to in subparagraphs

fo (iii) bar (ii) prescribed;

s at manifed on paragraph (d); and

anoragi to quoig to no subparagraphs (iii)

of (iv) of

paragraph (e);

- (iv) any other matters which may be prescribed.
- (3) A village council shall, after considering an application in accordance with subsection (2)-
- (a) grant in respect of all or a part of the land applied for subject to any conditions
- host to memory 29 or which may be prescribed;
- benefer and (ii) the village council

is directed by the Commissioner to impose in respect of a grant to a non-village organisation; and

- (iii) may be prescribed;
- (b) refuse to grant,
 a customary right of occupancy to the applicant.
- (4) Where an application is refused, the village council shall, at the request of the applicant, furnish that applicant with a statement of reasons for the refusal.

Contract for a 24.-(1) Where a village council customary right has determined to grant a customary of occupancy right of occupancy to an applicant, it

shall send or deliver to the applicant an offer in writing, signed by the chairman and secretary of the village council, in a prescribed form, setting out the terms and conditions subject to which it will grant that customary right of occupancy to that applicant.

- (2) Where an applicant has received an offer in writing under subsection (1), he shall, within not more than ninety days, reply in writing signed by the person or persons required under paragraph (b) of subsection (3) of section 21 to sign an application for a customary right of occupancy to that offer in the prescribed form either-
 - (a) accepting that offer; or
 - (b) refusing to accept that offer,

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and send or deliver that reply to the village council or its authorized officer.

- offer made under subsection (1) is conditional upon the payment of a sum of money by way of a premium, an advance payment of rent, a deposit or any tax or due to the village council or any other person or organisation named in the offer, that acceptance shall not operate to conclude a contract for the grant of a customary right of occupancy unless and until that sum of money is paid in full to the payee.
- (4) A payee who has received a sum of money under subsection (3) shall immediately provide a receipt for that payment to the person who has made that payment.
 - (5) Where, at any time after the

conclusion of a transaction it is shown to the satisfaction of that person or organisation charged with responsibility for preventing combating corruption that any part of the process of obtaining a customary right of occupancy was effected by a corrupt practice, that customary right of occupancy shall without any further action, and notwithstanding any other rule of law to the contrary, be deemed to be void and of no effect and the grantee of that void customary right of occupancy shall, without prejudice to any action which may be taken against that person under any law dealing with corruption, immediately become a trespasser on that land, liable to suffer all such action and penalties applicable to trespassers.

Grant of a customary right of occupancy

grant of a customary right of occupancy has been concluded, a village council shall, within not more than ninety days of that conclusion, grant a customary right of occupancy to the applicant who accepted the offer referred to in section 23 by issuing a certificate, to be known as a certificate of customary right of occupancy to that applicant.

- (2) A certificate of customary right of occupancy shall be-
 - (a) in a prescribed form;
 - (b) signed by the chairman and secretary of the village council;
 - (c) signed or marked with a personal mark by the

right of occupancy to which it relates at the foot of each page of the certificate;

- (d) signed, sealed and registered by the District Land Officer of the district in which the village is situate.
- 26.–(1) Subject to the provisions of subsection (3), (4), and (5) of section 17, the village council may require the payment of a premium on the grant of a right of occupancy to a non-village organization or a person or group of persons referred to in subsection (3) of section 22.
- (2) In determining the amount of any premium, the village council shall seek and take account of the advice of the Commissioner, who in giving that advice which may be in the form of published advice to all village

Paymet
of premium
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right of
occupancy to
a nonvillage
organization

principles governing the determination of a premium in respect of granted rights of occupancy set out in subsection (3) of section 31 of the Land Act, 1999.

- (3) Where the payment of a premium as aforesaid is required, a demand for that payment shall be sent or delivered to the person to whom the certificate of customary title is to be sent or delivered at the same time as or before that certificate is sent or idelivered to that person.
- (4) No certificate of right of occupancy shall be valid or of any effect and no occupation of land under a contract for a right of occupany or otherwise shall be lawful until a premium which has been demanded in accordance with subsection (2) has been paid in full or in any other way which may be provided in the contract for the grant of a right of occupancy.

where it has been provided under a contract for a customary right of occupancy that a premium may be paid in instalments or in some other manner than in full at the time of or before the issuing of a certificate of customary right of occupancy, and failure to comply with any term of that contract shall be deemed to be a failure to comply with a condition of the right of occupancy which shall give rise to revocation by the village Council.

Length of term 27.-(1) A customary right of of customary occupancy may be granted-

occupancy indefinite or any length of time less than an indefinite and bear than the second to the s

persons all of whom are citizens provided that there shall be a presumption that, that person or group of persons shall be granted a customary right of occupancy for an idefinite term;

- (b) for a term together with an option for a further term or terms which together with the original term may be up to but shall not exceed ninety-nine years;
- (c) from year to year or for periods of less than a year determinable by the village council by one year's notice or less, whether or not the grant includes an initial fixed term does not exceed four years.

has been granted for a term certain, with or without an option for a further term or terms certain, no reduction in the length of that term certain or the term or terms certain contained in the option or options shall be made to or introduced in the option or options shall be made to or introduced into that right of occupancy by the village council without the agreement of the occupier.

Rent

- 28.-(1) The village council may require the payment of an annual rent-
 - (a) for a right of occupancy from a person or group of persons reffered to in subsection (2) of section 23,
 - (b) from a non-village organization, subject to the provisions of subsections (3), (4) and (5) of section 17.

- (2) The rent shall be paid in any instalments and at any intervals of time during the year which shall be provided in the certificate of customary title.
- (3) The rent shall be paid to the village council or an authorized officer of that council and a signed receipt in respect of each payment of rent that is made shall be given to the payer of that rent.
 - (4) In determining the amount of any rent, the village council shall-
- directives from the

 Commissioner on the

 amount of, or the method
 of, or the factors to take
 into account in,
 was yellowed any rent which is to be
 each any rent which is to be

- (b) where no such directives have been issued, take account of-
- the Commissioner on the amount of, or the method of or the factors to take into account in determining any rent which is to be paid;
 - (ii) the use of land permitted by the customary right of occupancy which has been granted;
 - evidenced by any dispositions of land in the area where

the customary right of occupancy has been granted, whether those dispositions were made in accordance with customary law or not;

- (iv) an assessment by a qualified and authorised valuer or other person with knowledge of the value of land of the appropriate amount of rent which should be paid for land;
- (v) the amount of any premium required to be paid on the grant

of a customary right of occupancy.

- (5) Notwithstanding anything to the contrary contained in any certificate of customary right of occupancy or in any of the provisions of any conditions of a customary right of occupancy, in every case in which the village council requires the payment of a rent, that council shall, subject to the approval of the Commissioner, have the power to revise that rent at intervals of not less than five years and in any exercise of that power, the determination of any revised rent shall be in accordance with subsection (4).
- (6) Where the village council determines to grant a customary right of occupancy to any person or organisation of land which is to be

used exclusively for religious worship or for burial or exclusively both for religious worship and for burial, that council shall not require the payment of any rent in respect of that customary right of occupancy.

- (7) The village council may grant a customary right of occupancy at a nominal rent if the land is to be used exclusively for a charitable purpose by a non-village organisation and is empowered to review and increase that rent if the land ceases to be used exclusively for a charitable purpose.
- (8) Where any rent or instalment of any rent payable in respect of a customary right of occupancy or any part of that rent or instalment remains unpaid for a period of six months after the date on which the same is required to be paid, interest at a rate of two per centum a month or part of it, or at any

other rate which the Minister may by order published in the Gazette prescribe, shall be payable on the amount of the arrears as it is from time to time until payment of the whole amount is made from the date from which the rent or instalment first fell into arrears and shall be collected and recoverable in the same manner as rent.

- (9) The acceptance by or on behalf of the village council of any rent shall not be held to operate as a waiver by that council of any right to revoke the customary right of occupancy accruing by reason of the breach of any covenant or condition, express or implied in any contract for a customary right of occupancy or in any certificate of customary title granted under this Act.
- (10) The provisions of section 50 of the Land Act, 1999 in relation to the summary proceedings for recovery of rent shall apply to rent due and

owing under this Part as they apply to rent due and owing under Part VI of the Land Act, 1999

Conditions

- 29.-(1) Every customary right of occupancy shall be granted subject to the conditions set out in this section and any other conditions which may be prescribed.
- (2) Every grant of a customary right of occupancy shall contain the implied conditions that-
 - (a) the occupier will use and will take steps to ensure that those persons occupying and working the land with him or occupying and working the land with his permission will-

- (i) keep and maintain the land in good state; and
 - (ii) in the case of land
 to be used for
 farming, farm the
 land in accordance
 with the practice of
 good husbandry
 customarily used in
 the area; and
- (iii) in case of land to be used for pastoral purposes, use the land in a sustainable manner in accordance with the highest and best customary

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wel yaemoteus io selur pastoralism
sideoiloge swel-yd lla bi practised in the
luiwel lle bas basi ed varea;

- (b) any permissions that are required to be obtained before any buildings are erected will be obtained and no building will be erected until those permissions have been so obtained;
- rent, fees, charges, taxes and other required payments due in respect of his occupation of the land as and when such imposts fall due;
- (d) the occupier will comply

with all rules, including all rules of customary law and all by-laws applicable to the land and all lawful orders and directions given to him by the village council or any person acting with the authority of the village council relating to his use and occupation of the land or any orders of any local or other authority having jurisdiction over land in the area where the land is situate or any orders of any officer exercising powers under this Act;

(e) the occupier will retain and keep safe all boundary

marks, whether natural or otherwise on or at the boundaries to the land;

- residing in the village but where he is to be temporarily absent, will make all proper arrangements for the land to be managed and used in accordance with the conditions set out in this subsection.
- (3) A person who signs a certificate of customary right of occupancy in accordance with the provisions of section 24 shall, where he signs on his own behalf, be deemed to have bound himself and, be deemed to have bound that group of village

organisation, be deemed to have bound that group of persons to the village council to observe and comply strictly with each and every condition contained in that certificate of customary right of occupancy.

authorized officer of the village council or other department of government may, subject to the provisions of section 170 of the Land Act, 1999 relating to the right of entry enter on land the subject of customary right of occupancy and inspect whether the conditions under which the customary right has been granted are being complied with.

Assignment of customary right of occupancy by villager

30.-(1) A villager or group of villagers or a lender of monies on the security of a mortgage exercising the powers of sale provided for by sections 131 to 133 of the Land Act, 1999 in relation to power of sale may assign a customary right of occupancy in the land held for that customary right of occupancy or a part of it to-

- (a) a villager or a group of villagers;
- (b) the village council;
 - (c) a person or group of persons, being citizens, to whom subsection (2) applies.
- (2) An assignment of a customary right of occupancy may be made to a person or group of persons not ordinarily resident in a village if and only if-
 - (a) the village council approves of the assignment;
 - (b) there is an agreement prior to the assignment;
- (c) in event of termination of the agreement the assignment shall be made to a citizen.

To quote a (d) tenthat a person or authorized representative lionuo sanof that group of persons to guota to simake and sign a or anastria amod deposition that he or they will make that village his or their principal place of residence or work or commence the construction of one or more houses to be a principal place of residence within six months of that deposition; or

that person or that group
the making of persons make and sign
to nonterumed to a deposition that he or
the making of the making of
that deposition commence
the construction of some
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other building which is likely to provide benefit for villagers or the village; or

- of persons make and sign
 a deposition that he or
 they intend within six
 months of the making of
 that deposition to
 commence some
 agricultural, mining,
 tourist or other
 development which is
 likely to provide benefit to
 villagers or the village.
 - assignment shall notify the village council on a prescribed form of that proposed assignment not less than sixty days before it is proposed.

- (4) The village council shall disallow an assignment which-
- (a) would result in the assignee occupying an amount of land in excess of the prescribed maximum for that village;
 - (b) would operate or would be likely to operate to defeat the right of any woman to occupy land under a customary right of occupancy, a derivative right or as a successor in title to the assignor;
 - (c) would result in the assignor occupying an amount of land insufficient to provide for his livelihood or where he

has a family or other dependants, for their livelihood;

- or group of persons referred to in subsection (2) and
 - not made the required deposition;
 - is in possession of clear evidence that, notwithstanding that a deposition has been made, the person or persons who made the deposition do not intend to comply

be prescribed.

- who occupies land under a customary right of occupancy but is and has been for not less than six months in breach of-
 - (i) one or more terms
 and conditions
 subject to which he
 occupies land under
 that customary right
 of occupancy; or
 - (ii) any rules applicable
 to the land or the
 use of the land
 which he occupies
 under that
 customary right of
 occupancy;
- (f) does not comply with any other matters which may be prescribed.

- (5) Where a village council determine to disallow an assignment, it shall send or deliver to the parties within sixty days of the receipt of a notice of assignment, a notice to disallow the proposed assignment in the prescribed form.
- (6) An assignment that infringes the criteria set out in subsection (4) or that is made notwithstanding the service of a notice to disallow on one or both parties to the assignment shall be void.
 - (7) A village council shall-
 - (a) send a copy of any notification of assignment and any notice to disallow to the Commissioner;
 - (b) record any assignment of a customary right of occupancy and any

notice to disallow in the register of village land.

Approval required for private disposition of derivative right

- 31.-(1) This section applies to the disposition, by the holder of a certificate of occupancy or right of occupancy, of a derivative right in the land held for a customary right of occupancy.
- (2) A disposition of a derivative right to which this section applies shall-
 - (a) comply with the provisions of this section and the sections 32 and 33;
- (b) be void if the provisions of the sections referred to in paragraph (a) are not complied with.

- (3) Unless otherwise provided for by this Act or regulations made under this Act, a disposition of a derivative right shall require the approval of the village council having jurisdiction over the village land out of which that right may be granted.
 - (4) (a) The grant of a lease,
 a licence, a usufruct
 or an equivalent
 interest in customary
 law from year to
 year or for a lesser
 period to a person
 ordinarily residing
 in the village from a
 person ordinarily
 residing in the

village; and

- (b) The creation of-
 - (i) a small mortgage; or
 - (ii) a mortgage for an amount equal to or less than the amount for which a small mortgage may be created; or
 - reasonable sale or
 pledge under and in
 accordance with
 customary law in
 favour of a person
 ordinarily residing
 in the village by a
 person ordinarily
 residing in the
 village for a sum not

greater than the sum
which may be
obtained by a loan
through a small
mortgage;

than ten years by a lender excising the powers of leasing contained in section 29 of the Land Act, q 1999 relating to the lender's power of leasing;

shall not require the approval of the village council.

- (5) An application for approval to a grant of a derivative right shall be-
- (a) made to the village council on a prescribed form;

- (b) signed by the applicants;
- (c) accompanied by a simple
 plan showing the location
 and boundaries of the land
 and any further
 information which may be
 prescribed;
- (d) accompanied by any fees which may be prescribed.
- require relevant information additional to that which is referred to in subsection (5) and shall not be under any obligation to determine an application in respect of which it has required additional information until that additional information has been submitted to it or a satisfactory explanation of why that additional information cannot be submitted to it has been submitted to it.

- (7) The village council may consult with any person or organisation on an application for an approval to which this section applies but shall not be obliged to accept any advice received as a result of any consultation, nor, shall it be obliged to delay a determination on the application where it has requested for an advice within a certain time and that advice has not been submitted within that certain time.
- (8) An approval of a derivative right under this Section shall-
 - (a) be personal to the applicant; and
 - (b) not be assignable.
- (9) An approval of a derivative right shall be-
 - (a) in the prescribed form to

be known as a `certificate of approval to a derivative right' with the specific derivative right for which approval has been given named in brackets;

- (b) signed by the chairman and secretary of the village council;
- (c) accompanied by a demand for any premium, rent, taxes or dues which may be prescribed or which may be determined by the village council;
- (d) delivered or sent by registered letter to the holder of the certificate of customary right of occupancy to his last

known abode or his usual place of business;

- (e) entered in a register of appeals to be kept by the village council.
 - (10) A derivative right shall be made subject to any terms and conditions which may be prescribed or which the grantor shall determine.
 - (11) Where the derivative right permits the grantee to occupy and use any land in the village, that occupation and use shall be subject to the provisions of section 29 of this Act.
 - (12) A derivative right may be registered in the register of village land and that registration shall-
- existence and content of the existence and content of the that derivative right;

(b) confer priority on that derivative right as against any derivative right created out of the same customary right of before occupancy the registered derivative right which has not been registered, whether or not prior that created derivative right was known to the grantee of the later created derivative right.

Grant of
derivative
right by
village
council

- 32.-(1) This section applies to the grant by a village council of a derivative right in village land.
- (2) An application for a grant of a derivative right shall be-
 - (a) made to the village council

nollamolni on a prescribed form;

- bus (2) non-applying for the derivative right or his duly appointed agent or representative;
- (c) accompanied by simple plan showing the location and boundaries of the land and any other information which may be prescribed or which may be required by the village council;
- (d) accompanied by any fees which may be prescribed;
- notified to the members of the village by any means and battance bring the matter to their battance bring the matter to their
- midiw b(3) The village council may

require any relevant information additional to that referred to in paragraph (c) of subsection (2) and shall not be under any obligation to determine an application in respect of which additional information has been required until that information has been submitted to it or a satisfactory explanation as to why it cannot be submitted has been submitted to it.

(4) The village council may consult with any person or organisation on an application made for a derivative right under this section but shall not be obliged to accept any advice which it obtains as a result of any consultation, nor, shall it be obliged to delay making a determination if it has requested for an advice within a specific period and that advice has not been received within that period.

- (5) An application for the grant of a lease under this section-
 - (a) of five hectares or less and for five years or less, to be known as a class A application, shall be determined by the village council;
 - than thirty hectares and for more than five but less than ten years, to be known as a class B application, shall be determined by the village council subject to approval by the village assembly;
 - (c) of more than thirty

hectares or for more than ten years, to be known as a class C application, shall be determined by the village council subject to approval by the village assembly and the advice of the Commissioner.

- (6) (a) A Class A application shall be-
 - (i) determined within sixty days of the receipt of the application or within sixty days of the receipt of additional information required under subsection (3);
 - (ii) deemed to be

approved if the village council does not determined it within the period referred to in paragraph (i);

- (b) A class B application shall be-
 - (i) determined by
 the village
 council upon
 that
 determination
 being
 submitted for
 approval to the
 village assembly within ninety days of the

approved if the village council does not determined in within the period

receipt of the application or within ninety days of the receipt of additional information required under subsection (3);

the village assembly not less than seven days before the meeting at which that application is

to be considered for approval;

- (iii) approved or refused by the village assembly within thirty days of the period referred to in paragraph (i);
- (iv) deemed to be determined in accordance with the decision of the village council if it is refused by the

council a and
that
submitted a to
the village
assembly to
be considered
for approval

village
assembly
within the
periods
referred to in
paragraph (i);

- (c) A Class C application shall be
 - the village council and that determination submitted to the village assembly to be considered for approval

within one hundred and twenty days of the receipt of the application or within one hundred and twenty days of the receipt of additional information required under subsection (3);

(ii) submitted to the village assembly not less than

fourteen days
before the
meeting at
which that
application is
to be
considered for
approval;

- (iii) approved or refused by the village assembly within sixty days of the periods referred to in paragraph (i);
- (iv) submitted to the Commissi-

oner, together
with all
information
for his advice
if any within
thirty days of
the
approval by the
village assembly;

(v) approved or refused by the village council within thirty days or any longer period which may be determined by village

council;

deemed to be (vi) refused if the Commissison er advises the village council against it and village the council agrees with him within two hundred and ten days or longer any period which is referred to in paragraph (v) of the receipt of the

application by
the village
council or of
the receipt by
the village
council of
additional
information
required
under
subsection
(3);

- (7) A grant of a derivative right under this section shall be-
 - (a) personal to the applicant;
 - (b) not assignable without the consent of the village co-uncil after the approval of the village assembly.
- (8) An application for an approval to assign a derivative right

granted under this section shall be made on a prescribed form and shall comply in every respect with and be governed by the provisions of this section as if it were an application for a grant of a derivative right.

- (9) A grant of a derivative right shall be-
 - (a) in the prescribed form;
 - (b) signed by the chairman and secretary of the village council;
 - (c) accompanied by a demand for any premium, rent, fees, taxes and dues which are prescribed or which may be determined by the village council;
 - (d) where it is the grant of a lease for which a Class C

application had been made, counter-signed by the Commissioner and shall unless and until it is so counter signed, be void;

- (e) delivered or sent to the applicant at his last known abode or usual address;
- (f) entered in the register of village land.
- (10) A grant of a derivative right under this section shall be made subject to section 29 and such other terms and conditions as may be prescribed or as are determined by the village council.

(b) the likely benefits to be derived by the village as a whole by the grant of the derivative right;

the need to ensure

Criteria for
determining
application for
approval or
a grant of a
derivative
right

33.-(1) A village council and, in respect of a Class B and Class C application under section 32, a village assembly, shall, in determining whether to give approval to a private disposition of a derivative right under section 34 or to grant a derivative right under section 32 have regard to all or any of the following matters which appear to the village council to be relevant to the application, that is to say-

- (a) any land use plan prepared or in the process of being prepared by or for the village;
- (b) the likely benefits to be derived by the village as a whole by the grant of the derivative right;
- (c) the need to ensure the

any advice or information

(d)

(e)

provisions of subsection

(1)e village council have

maintenance of sufficient reserve of land for occupation and use villagers and for community and public use by those persons;

the need to ensure that the special needs of women for land within the village is and will continue to be adequately met;

the need to ensure that the special needs of landless people and the disabled within the village will continue to be adequately

any advice received from noits siloge and no noisisable absention any person or organisation which has been consulted

on the application;

- (g) any advice or information given by any department of government on the application;
- (h) any other matters which may be prescribed.
- which is the subject of an application is a lease for more than ten years to be granted by a lender exercising the powers of leasing contained in section 128, of the Land Act, 1999 relating to Lenders power of leasing there shall be a presumption that, notwithstanding the provisions of subsection (1), approval will be given to the lease and notwithstanding the provisions of subsection (3), that approval will be deemed to have been given if the village council have not made a decision on the application within sixty days of the receipt.

- determining an application under sections 31 and 32-
- conditions which may be prescribed or determined by the village council; or
 - (b) refuse,

the application and unless this Act provides otherwise, a failure to make a decision within the time specified in this section shall operate as a refusal to approve an application.

(4) Where a consent to a grant of a derivative right is refused by a village council or, in the case of a class B or class C application made under section

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assembly or in case a class C application, is not confirmed by the Commissioner, the village council or as the case may be the Commissioner shall, at the request of the applicant furnish that applicant with reasons for the refusal or non-confirmation of that application.

Duties of grantee of derivative right

34.-(1) A grantee of a derivative right shall pay all the premia, rent, taxes and dues which are required to be paid in connection with that grant and no such grant shall be valid or effective to transfer any interest in any village land or give rise to any rights in the grantee unless and until all the premia, rent, taxes and dues have been paid accordingly.

- (2) The chairman and secretary of the village council or any other officer of the village council to whom any premia, rent, taxes or dues are required to be paid under this section shall endorse and sign a receipt for that premium, rent, tax or due on the certificate of the grant of the derivative right.
- (3) A grantee of a derivative right shall comply with-
- (a) all the terms and conditions subject to which the derivative right has been granted;
- (b) all lawful orders issued and all bye-laws made by the village council of the village having jurisdiction over the land subject to the

local or other authority
having jurisdiction over
land in the area or any
orders issued by an official
exercising powers under
any law in the United Republic;

any public officer or public body exercising powers under any Act, if the derivative right is a lease for which a class C application was made.

(4) A grantee who does not comply with the provisions of this section shall be liable to suffer the termination of his derivative right.

Surrender of customary right of occupancy by villager

- 35.-(1) A villager or group of villagers or any other person or persons holding a customary right of occupancy may, subject to the provisions of this section, at any time surrender the customary right of occupancy which has been granted to him or them.
- under a customary right of occupancy, whether made in accordance with customary law or otherwise which has or which it is reasonable to deduce has its purpose or its effect the depriving, or the placing of impediments in the way of a woman from occupying land which she would, but for that surrender of land, be entitled to occupy under customary law or otherwise shall not operate and shall be of no effect to prevent that woman from occupying

that land in accordance with customary

- under a customary right of occupancy,
 whether made in accordance with
 customary law or otherwise which has
 or which it is reasonable to deduce has
 as its purpose or its effect the
 fraudulent, dishonest or unjust
 deprivation of a derivative right-holder
 of his derivative right shall not be a
 valid surrender and shall not operate to
 deprive that right-holder of his
 derivative right.
 - (4) Anybody referred to in subsection (1) who surrender land held under a customary right of occupancy shall remain liable to pay all rent, interest on a loan taken out on the security of the customary right of

and due for payment at the time of the surrender of the customary right of occupancy; and-

- (a) A village council shall continue to be able to exercise all the powers provided for by this Act to recover rent owned by an occupier of land held for a customary right of occupancy; and
- (b) a lender who has lent money on the security of the customary right of occupancy shall continue to be able to exercise all the powers of a lender in respect of that loan.

- customary right of occupancy shall remain liable for any breaches of any conditions subject to which the customary right of occupancy was granted and for breaches of any rules relating to the use of that land which occurred during the occupation or to the use of the land for which he was responsible up to the time of the surrender of the customary right of occupancy.
 - (6) Where a villager surrenders a customary right of occupancy for reasons of age, infirmity, disability, poverty or other similar grounds, the village council may, take over from that villager the responsibility for paying any debts to which subsection (4) refers.

- right of occupancy shall be-
- form;
- (b) signed by the person or the authorized representatives of the group of persons surrendering the customary right of occupancy;
- evidence which may be prescribed or which is considered by the village council to be satisfactory that all persons-
- a on dependent on a surrender on a surrender on is only used occupancy.

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of the surrender and the surre

- bedings derivative rights in that customary right of occupancy are aware of the surrender;
 - (d) any other information which may be prescribed;
 - (e) send or delivered to the village council of the village where the land is situate.
 - (8) The Village Council shall make entries prescribed in the register of village land recording the surrender of customary right of occupancy.
- out of a customary right of occupancy which is surrendered under this section,

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shall, as from the date of the surrender, be held on the village council on the same terms and conditions which it was held on the person who has surrendered the customary right of occupancy.

Regrant of right of occupancy

36.-(1) The regrant of a surrendered surrendered customary right customary occupancy by a village council shall be in accordance with the provisions of this Part applicable to the grant of a customary right of occupancy.

(2) Where the person who has surrendered a customary right of occupancy has dependants, or if a woman, a spouse and if a man one or more spouses, the village council shall, before publicising the fact that the land visition and is available to be granted to any villager or other person to whom section 22

refers first offer the land to the following persons in the following order, that is to say-

- (a) where the person who has surrendered the customary right of occupancy is a man;
 - (i) his wife;
 - (ii) where he has more than one wife, his wives in order of seniority;
 - (iii) where he has no wife or all wives have declined to accept the offer, his dependants;
 - boul and tent tool and (b) where the person who has a surrendered the customary right of occupancy is a

morfibnos a forman; woman;

- the some more (i) her husband;
- divorced from her husband or husband or her husband has declined to accept the offer, her dependants.
- (3) A customary right of occupancy to which this section applies shall be granted to a person other than a person referred to in subsection (2), free of any outstanding debts which may have burdened the surrendered customary right of occupancy.

37.-(1) A breach of a condition When breach of condition of requiring continuous performance shall customary arise as soon and continue as long as right of the condition is not complied with. occupancy (2) A breach of a condition

arises

- subject to a fixed term shall arise-
 - (a) in the case of a condition requiring the doing of any act within any time specified and upon that time being extended by the village council, within that extended time, upon the expiry of that time without that act having been done;
 - (b) in the case of a condition benefit and requiring any act to be vonsquerefrained from until any specified in the time

time has been extended by

the village council, within

that extended time, upon the

doing of that act before that

time.

- (3) Where any condition consists of two or more separate obligations or liabilities, a failure to fulfil any of those obligations or liabilities shall constitute a breach of the condition.
- of an obligation to comply with regulations made by any local or other authority or the lawful orders of a village council having jurisdiction in the area where the land held for a customary right of occupancy is situated, a failure to comply with any of those regulations or any lawful order

shall constitute a breach of a condition. whether that failure is made the subject of criminal proceedings or not.

odi noqu . (5) Where any condition consists of an obligation to comply with any rule of customary law applicable to the land held for a customary right of occupancy, or to the person occupying that land, a failure to comply with that rule shall constitute a breach of condition.

Remedies for breach of condition

38.-(1) Upon any breach of any condition subject to which customary right of occupancy has been granted, or upon any failure to pay any rent, taxes or other dues, the village customary right of occupancy

those regulations or any lawful order

situated, a failure to comply with any of

- (a) exercise any remedy available under customary law;
- (b) impose a fine on an occupier in accordance with section 40;
 - (c) serve a notice on the occupier in accordance with section 41 requiring the breach to be remedied;
 - (d) serve a supervision order on the occupier in accordance with section 42;
- (e) temporarily assign the customary right of customary to another person in accordance with section 43;

- whenes (2) The village council may take action under sections 39 to 43 in respect of the same breach.
- time, withdraw from taking action under sections 39 to 43.
 - (4) For purposes of this section and sections 39 to 43, every breach of condition shall be taken as capable of being remedied, and the action required for remedying any breach shall be taken to consist-
- (a) in the case of a positive condition or a requirement in a regulation or order, to do some act or thing, or the doing of any act or thing the omission of which constituted or formed part of the breach;

and a megative condition, or a prohibition in a regulation or order, of the doing of those acts and things which are necessary or which the village council may direct to be done to put the land into the state in which it would be if the breach had not occurred.

provide advice, in writing, either generally or to a specific village on any remedies referred to in this section and all village councils shall have regard to that advice in so far as it applies to their exercise of power under this section or a sections 39 to 43.

customary right of occupancy and how he may rectify that breach.

- Before proceeding to take mountained any action in respect of a breach of a condition of the customary right of occupancy, the village council shall consider-
 - (a) the nature and gravity of the breach and whether it could be waived;
 - (b) the circumstances of the occupier;
 - has been breached could be remedied so as to obviate the breach,

and shall in all cases where the village council is minded to proceed to take action on a breach, first issue a warning to the occupier advising him that he is in breach of the conditions of the customary right of occupancy and how he may rectify that breach.

Remedies in accordance with customary

39.-(1) Where a village council proposes to exercise any customary law remedy or a breach of a condition imposed under and in accordance with customary law, it shall-

- (a) inform the person alleged to have committed the breach of-
 - (i) the alleged breach;
 - (ii) the proposed remedy;
- (iii) where some act or thing is required to be done, the time, being not less than twenty-one days, within which it must be done;

stated period or permanently, shall no

- (iv) the consequences of a failure to remedy the alleged breach;
- (b) give the person alleged to have committed the breach an opportunity, of not less than fourteen days notice, to make representations on the matter;
 - c) take all such representations into account before determining whether to proceed to exercise a customary law remedy.
- (2) A customary law remedy which permits or requires that a person be deprived of his land, either for a stated period or permanently, shall not take effect unless and until the

one-vinewi remedy.

- and to Join and (3) Where the village council the propose to exercise the remedy referred adaptation (2), it shall-
- in writing of the proposal and the reasons for it;
- (b) provide the Commissioner with any material which was before it, including a summary of any representations made under paragraph (b) of subsection (1), when it determined to exercise that and to adjacent and to adjacent and to adjacent and to adjacent and the adjacent and th
- provide the Commissioner with any additional information which the

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writing within twenty-one days of the receipt of the information and material referred to in paragraphs

(a) and (b), require;

- (d) not exercise the remedy
 unless and until the
 Commissioner has
 signified, in writing, his
 assent to that remedy.
- (4) Where a village council is required by the Commissioner to provide additional information under paragraph (c) of subsection (3), it shall provide that additional information within forty days of the receipt of the request from the Commissioner.
- signify, in writing, that he assents or

that he does not assent to the remedy referred to in subsection (2) within thirty days after he has received all that information which is referred to in subsection (3).

Fine for breach 40.-(1) Where any breach of a of condition condition has arisen, the village council may serve a notice in the prescribed form on the occupier who has committed the breach requiring him to show cause as to why a fine should not be imposed upon him in respect of that breach.

- (2) The occupier shall, within the time specified in the notice, respond to the notice.
- (3) Where the occupier has not responded to the notice or where he has failed to show cause, to the satisfaction

should not be imposed, the village council may serve a notice on the occupier requiring him to pay a fine within any time which may be specified in the notice and in the case of a continuing breach, the occupier shall be liable without further notice to pay a further fine during which the breach continues.

- (4) The Minister may make regulations prescribing fines which may be imposed by a village council in respect of breach of conditions.
- (5) The village council may, where the occupier has not committed any other breach of a condition of the customary right of occupancy, suspend the payment of any fine of up to two years if the occupier does not commit

that breach again within the period during which the fine is suspended, the fine shall lapse and shall no longer be payable.

- no further action shall be taken by the village council in respect of that breach.
- satisfied, after due inquiry, which shall include an opportunity for the occupier to make representations on the matter, that the breach in respect of which a fine has been paid is continuing or has recommenced, it may take action in respect of that continuing or recommenced breach under sections 39 or 41 to 43.1 and llade notices to direct to the sections 39 or 41 to 43.1 and llade notices to direct to the sections 39 or 41 to 43.1 and llade notices to direct to the sections 39

(4) Where it appears to the

village council in respect of that breach.

Summary, action to of condition

41.-(1) Where any breach of condition has arisen, and it appears to remedy breach the village council that the breach is capable of being remedied by the occupier who has committed the breach within a reasonable time, it may serve a notice in the prescribed form on the occupier specifying the action required for remedying the breach and requiring the occupier to take that action within the time specified in the notice.

- (2) The occupier on whom a notice under this section is served shall comply strictly with the notice.
- (3) Where a notice served under this section is strictly complied with, no further action shall be taken by the village council in respect of that breach.
 - Where it appears to the (4)

village council that the notice has not been strictly complied with or that the breach in respect of which the notice was served is continuing or has recommenced, it shall take action in respect of that continuing or recommenced breach in accordance with sections 42 or 43.

Supervision

42.-(1) Where any breach of order to condition has arisen and it appears to remedy breach the village council that the occupier of condition who has committed the breach is unlikely or is not capable of remedying the breach unless his use of the land is supervised, it may serve an order, to be known as a 'supervision order' in the prescribed form on that occupier.

- (2) A supervision order shall-
- (a) specify the acts or things that must be undertaken to remedy the breach;
 - (b) the time, being not less than sixty days, within which the acts or things must be undertaken;
 - (c) the person, being an officer from-
 - (i) the village council; or
- (ii) another local authority authority having jurisdiction in the area; or

a department of government,

who will supervise the undertaking of the acts or things that must be undertaken.

- of the opinion that the breach of condition is of such a severity or of such a technical nature or that the occupier is unlikely to comply with any orders of an officer of the village council that an officer referred to in sub-paragraphs (ii) and (iii) of paragraph (c) of subsection (2) should supervise the remedying of the breach, it shall-
- and the second (a) plinform that local authority or department of government of the facts of

the case;

- or department of government to provide an officer to supervise the remedying of the breach; and
 - (c) take no further action on the matter unless and until it is informed that an officer referred to in paragraph (b) has been authorized to exercise the functions of supervision under this section.
- (4) A local authority or government department shall, on receipt of a request referred to in paragraph (b) of subsection (3), inform

the village council as soon as may be as to whether it will or will not accede to the request and authorize an officer to exercise the functions of supervision.

- (5) Where a local authority or government department informs the village council that it will not accede to the request referred to in paragraph (b) of subsection (3), the village council may either-
 - (a) authorize an officer
 employed by the village
 council to exercise the
 functions of supervision;
 or
 - (b) withdraw from taking action under this section and take-

- (i) no further action; or
- (ii) action under sections 39 to 42 or 43.
 - (6) At the end of the period referred to in paragraph (b) of subsection (2) or any longer period which may be agreed to by the village council, the supervising officer shall report to the village council on whether the occupier has completed the acts or things which he was required to undertake by the supervision order.
 - (7) Where the report of the supervising officer is to the effect that-
 - (a) the occupier has completed
 the acts or things required
 to be undertaken, the
 village council shall take
 no further action under the
 supervision order;

- things required to be undertaken, the village council shall either-
- (i) extend the operation of the supervision order for any period which it considers necessary to ensure compliance with the order; or
 - (ii) take action under section 42.
- (8) The provisions of subsection

 (6) shall apply to a supervision order extended under the provisions of subparagraph (i) of paragraph (b) of subsection (7).

- (9) Where it appears to the village council that the breach in respect of which a supervision order was served has recommenced, it shall either-
 - (a) reactivate the supervision order and the provisions of this section shall apply to any reactivated order;
 - (b) take action under section 43.

Temporary assignment of customary right of occupancy on breach of condition

43.-(1) Where any breach of condition has arisen and it appears to the village council that, notwithstanding any action taken against the occupier in breach of those account of conditions under sections 39 to 42, the breach is-

- (a) seriously affecting the sustainable productivity of the land; or
 - (b) seriously harming the land
 of persons occupying land
 contiguous to the land
 where the breach is taking
 place; or
 - (c) continuing on account of
 the continued refusal or
 neglect of the occupier to
 undertake the necessary
 acts or things to remedy
 the breach,

the village council may determine to take action in respect of that breach under this section.

determines to take action under this section, it shall-

- (a) inform the Commissioner
- (i) all the facts of the case;
- (ii) the actions the village council has hitherto taken to remedy the breach;
 - (iii) the reasons why action under this section is necessary;
 - (b) request the authorization of the Commissioner to proceed under this section;
 - (c) take no further action
 unless and until it receives
 an authorization to proceed
 from the Commissioner.

- and request under subsection (2), the Commissioner-
- council to send any further information within any time which is specified in the direction;
- (b) shall within forty days of the receipt of the information and request under subsection (2) or the receipt of further information under paragraph (a), send or deliver to the village council a notice in writing either-

- (i) authorizing action to be taken under this section; or authorizing
- be taken under this section.
 - (4) A village council shall comply with any directive or notice received from the Commissioner under subsection (3).
 - (5) Where a village council has been authorized to proceed under this section, it shall serve a notice, to be known as a 'notice of temporary assignment' in the prescribed form on the occupier referred to in subsection (1) requiring him to show cause as to why his customary right of occupancy should not be assigned to another person ordinarily residing in the village

for a specified period of time.

- served with a notice of temporary assignment shall respond to that notice, either in person or through a representative within the time specified in the notice, and may adduce any evidence which he considers necessary to enable him to show cause as to why a temporary assignment of his customary right of occupancy should not take place.
- (7) Where the occupier has not responded to the notice or has failed to show cause, to the satisfaction of the village council as to why a temporary assignment of his customary right of occupancy should not take place, the village council shall serve on that occupier an order, to be known as a

conditional order of temporary assignment in the prescribed form.

- (8) A conditional order of temporary assignment shall-
 - (a) specify the length of time,
 being a period of not less
 than one year nor more
 than for the duration of
 the life of the occupier, for
 which his customary right
 of occupancy is to be
 temporarily assigned;
 - (b) state the name of the person or persons to whom the customary right of occupancy is to be temporarily assigned;
 - duties of the person against whom the order is

being made in relation to the assignee;

- less than sixty days from the date of the conditional order, on which the village council will apply to the court for the conditional order to be made absolute.
- (9) The persons to whom a temporary assignment of a customary right of occupancy shall be made and the order in which they shall be offered that temporary assignment are-
- (a) where the occupier has a current to stand the cocupier and working on the land, that spouse;

- (b) where the occupier is a man and has more than one spouse living with him and working on the land, those spouses as joint occupiers without the power to sever the joint occupancy;
 - (c) where the occupier has no spouse or if a man spouses, living with that occupier and working on the land, or the spouse, as the case may be, all the spouses decline to take the customary right of occupancy on a temporary assignment, those of the adult dependants of the occupier living with that

the land as joint occupier without the power to sever

(d) where there are no persons in the categories set out in paragraphs (a), (b) or (c) or all those persons have declined to take the customary right of occupancy on a temporary assignment, not more than two of the persons who may be a brother, halfbrother, sister or half-sister to the occupier, who are thioi and pay ordinarily residing in the village as joint occupiers without the power to sever the joint occupancy;

(e) where there are no persons in the categories set out in paragraphs (a), (b), (c) or (d), or all those persons have declined to take the customary right of occupancy on a temporary assignment, not less than two or more than four villagers, who shall be from the same clan as the occupier nominated by the village council and approved by the Commissioner as joint occupiers without the power to sever the joint occupancy.

- (10) Any person who takes a temporary assignment of a customary right of occupancy shall act as and shall be deemed to be, in relation to the land which is the subject to the temporary assignment, a trustee of that land, the beneficiary of which is the person from whom the temporary assignment has been taken.
- (11) A person shall not be disqualified from taking a temporary assignment of a customary right of occupancy under this section only on the grounds that by so doing, he would be occupying land in excess of the prescribed maximum for that village.
- (12) Any person may make an application to a court having jurisdiction over Land matters to make a conditional order of temporary

assignment absolute that court shall consider the matter *de novo* and hear the occupier and the village council and may-

- (a) make absolute the order specified by the village council;
- (b) amend the order specified by the village council and make that amended order absolute;
- (c) suspend the operation of the order for a specified period;
- (d) substitute an alternative remedy for the order;
- (e) dismiss the application and rule that the order be discharged;

- (e) make any ancillary order which appear to the court to be just and proper in all the circumstances of the case.
- assignment absolute shall, without more, operate as an assignment of the customary right of occupancy to which it refers to the assignee or assignees named in the order.
 - (14) A village council shall-
 - (a) hold that customary right of occupancy on the same terms and conditions as the occupier who, prior to the assignment, held that customary right of occupancy;

- (b) have no power to assign that customary right of occupancy;
- (c) where the former occupier wishes to continue to reside on the land-
 - (i) grant that former occupier a residential licence to reside on the land subject to any terms and conditions which the village council shall approve or which may be prescribed;
 - (ii) provide that former occupier with sufficient income for him to be able to

meet his basic needs;

- (d) apply any surplus income derived from the land in the following order to-
 - (i) paying any taxes or other public imposts owned by the former holder of the customary right of occupancy;
- damage done to the land by the former holder of the customary right of occupancy; 151
- obligations which the former holder of

the customary right of occupancy has to his family which he has not met or is not meeting;

(iv) paying the residue to
the former holder of
the right of
occupancy.

Revocation
of customary
right of
occupancy

44.—(1) The President may revoke a right of occupancy granted to a nonvillage organization or a group of persons not being villagers.;

(2) The provisions of sections 46 and 47 of the Land Act, 1999 which relates to fines for breach of condition and to summary action to remedy

breach of condition of customary right of occupancy respectively shall, as near as may be, apply to the revocation of a customary right of occupancy as they apply to the revocation of a granted right of occupancy provided for in those sections.

- direct the village council of the village where the land held of a customary right of occupancy which may be revoked is situate to give him any information and documents and take any action in any time which may be specified in the direction, being not less than forty days, to enable him to exercise his functions under sections 46 and 47 of the Land Act, 1999 in relation to that customary right of occupancy.
- which the directive is referred to in

subsection (3) shall comply with that directive in every particular.

Abandonment
of land held
for a
customary
right
of occupancy

- 45. (1) Land held for a customary right of occupancy shall be taken to be abandoned where one or more of the following factors are present:
 - (a) the occupier has not occupied or used the land for any purpose for which land may lawfully be occupied and used, including allowing land to lie fallow, in the village for not less than five years;
 - (b) the occupier, other than a villager whose principal means of livelihood is agricultural or pastoral, owes any rent, taxes or dues on or

in respect of the land and has
continued to owe that rent,
taxes or dues or any portion
of it for not less than two
years from the date on which
that rent, taxes or dues or
any portion of it first fell to
be paid;

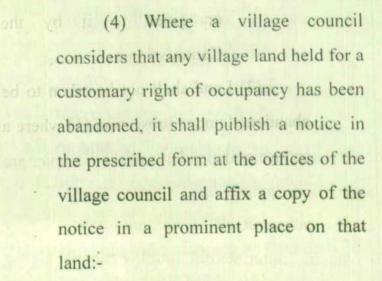
(c) the occupier has left the country without making any arrangement for any person to be responsible for the land and for ensuring that the conditions subject to which the customary right of occupancy was granted are complied with and has not given any appropriate notification to the village council.

- has been abandoned in terms of paragraph (a) and (b) of subsection (1), regard shall be had to-
 - (a) the means of the occupier of the land, and where the occupier is an individual, the age and physical condition of the occupier;
 - (b) the weather conditions in the area during the preceding three years;
 - (c) any customary practices,

 particularly practice amongst
 pastoralists which may have
 contributed to the non-use of
 the land during the preceeding three years;
 - sought by the village council

or given to it by the Commissioner.

- (3) Land shall not be taken to be abandoned under subsection (1) where a spouse or dependants of the occupier are occupying and using that land, notwithstanding that the occupier-
 - (a) is not and has not for not less than three years occupied or used that land; or
 - (b) owes, in accordance with paragraph (b) of that subsection any rent, taxes, fees or dues on that land; or
- (c) has not specifically appointed a spouse or a dependant to manage the land in his absence.



- (a) stating that the question of whether that land has been abandoned will be considered by the village council at a time which shall be not less than thirty days from the date of the publication of the notice;
 - (b) inviting any person in the village with an interest in that land to show cause as to

why that land should not be declared to be abandoned.

- (5) A copy of a notice referred to in subsection (4) shall be sent to the Commissioner who shall be entitled to make representations to the village council on the matter.
- (6) Where either no person interested in the land has shown cause or a person interested in the land has shown cause to the satisfaction of the village council as to why the land should not be declared to be abandoned, the village council may make an order, to be known as a 'provisional order of abandonment' in the prescribed form declaring the land to be abandoned.

- (7) A copy of a provisional order of abandonment shall be-
- (a) posted up in the offices of the village council;
 - (b) affixed in a prominent place on the land to which it refers;
 - (c) sent to the Commissioner.
 - (8) A provisional order of abandonment shall, without more, unless a person claiming an interest in the land applies to the court for relief against that order, become a final order of abadonment ninety days from the date of the declaration of the provisional order.

- (9) On the coming into effect of a final order of abandonment-
 - (a) the customary right of occupancy in the land which has thereby been declared to be abandoned, shall immediately and without further action being required stand revoked; and
- (b) the land which has been declared to be abandoned shall, immediately and without any further action being required, revert back to land held by the village council as available for allocation to persons ordinarily resident in the village.

(10) The village council shall, on a claim being made within sixty days of the coming into effect of a final order of abandonment by an occupier of land declared by that final order to be abandoned, on being satisfied by that claim, pay compensation for any unexhausted improvements on that land at the time of the coming into effect of the final order, but shall, where the occupier is an individual after taking account of the means, age and physical condition of that occupier, deduct from any payment or compensantion-

(a) all the costs incurred by the village council in the process of declaring the land to be abandoned, including any costs incurred in any action

claiming an interest in the land is applying for relief from a provisional order;

(b) all the costs incurred in restoring the land or any buildings on the land to the condition that it would be reasonable to expect they should have been in if they had not been abandoned;

any rent, taxes, fees or other dues owing and not paid by the occupier.

(11) A village council shall record a provisional and a final order of abandonment in the register of village land.

Application for relief

- 46.-(1) An occupier referred to in sections 39 to 45 may apply to a Court having jurisdiction for relief against any of the actions, notices, orders, or declarations which may be made against him by the village council or the Commissioner under any of those sections.
- (2) Where the effect of an action, notice, order or declaration made under any of the referred sections adversely affects any other person with an interest in land of the occupier against whom the action, notice, order or declaration has been made, that other person may, with leave of the court, apply for relief against so much of the action, notice, order or declaration that affects him.

- (3) where an application is made by one or more but not all co-occupiers, then unless the court orders otherwise, that application must be served on every co-occupier who is not already a party.
- (4) An application for relief is not to be taken as an admission by the occupier or any other person applying for relief that-
 - (a) there has been a breach of condition or an abadonment of land in respect of which the action, notice order or declaration has been served;
 - (b) by reason of that breach or abadonment, the village council or Commissioner has the right to revoke the customary right of occupancy or make a

declaration of abandonment;

- (c) all notices which were required to be served by the village council were properly served;
 - (d) a period for remedying the breach was reasonable.
 - (5) A court may grant any relief against the operation of an action, notice, order, or declaration which the circumstances of the case require and without limiting the generality of that power, may-
 - (a) cancel that notice, order or declaration;
- (b) vary the operation of that action, notice, order or declaration;

- that notice, order or declaration;
- for the one determined upon by the village council or Commissioner;
- (c) confirm the action, notice,
 order, or declaration made,
 notwithstanding that some
 procedural errors took
 place during the making of
 that action, notice, order or
 declaration if the court is
 satisfied that-
- person applying for relief was made fully aware of the substance of the action, notice,

to nother on declaration;

(ii) no injustice will be
done by confirming
that action, notice,
order or declaration,
and may grant that relief on any

and may grant that relief on any condition as to expenses, damages, compensation or any other relevant matter which the court thinks fit.

Appeals

- 47.-(1) An applicant for-
 - (a) the grant of a customary right of occupancy; or
- (b) approval to the asignment of a customary right of occupancy;
- pontation (c) approval to any disposition of a derivative right which requires consent;

(d) the grant of a derivative right by a village council,

who is refused that grant or approval by a village council or where that grant or approval requires the confirmation or approval of the village assembly, is refused that confirmation or approval may appeal against that refusal to the District Council having jursdiction over where the land the subject of appeal is situate and may further appeal to the Commissioner and further to the Court.

C: Adjudication of interest in land

Application of this Sub-Part

48. Except where the boundaries of and interest in land is registered under any law applicable to the registration of village land, or notwithstanding such registration, the boundaries and interests in land are fully accepted and agreed to

by all persons with an interest in that land and in respect of the boundaries of that land and land bordering that land, no grant of a customary right of occupancy shall be made to any person, group of persons or non-village organisation unless and until the boundaries of and interest in that land have been adjudicated in accordance with the provisions of this Sub-Part.

Spot adjudication 49.–(1) A person or, group of persons may, on making an application to a village council for a customary right of occupancy, apply, on a prescribed form to that village council for adjudication, to be known as 'spot adjudication' to be applied to that land in respect of which they have applied for a customary right of occupancy.

- determine whether spot adjudication may be applied to the land in respect of which it has been requested or whether it is necessary, in order for adjudication to be applied to land in a proper and just manner, to apply adjudication to land contigous to or in the vicinity of the land for which adjudication has been requested.
 - (3) Where the village council determines that spot adjudication may be applied to the land, it shall commence the process of adjudication in respect of that land.
- (4) Where the village council determines that it is necessary to apply adjudication to land contigous to and in the vicinity of the land for which

adjudication has been requested, it shall-

- (a) submit the determination in the form of a recommendation to the village assembly for its approval;
 - (b) inform the District Council having jurisdiction over that village of the determination and the reasons for it;
 - (c) inform the applicants of the determination and the reasons for it.
 - (5) Where, either-
- (a) a village assembly rejects the recommendation of the village council submitted to it under paragraph (a) of subsection (4); or
 - (b) an applicant for adjudication

ylamoo llade libruoo submits an objection, in add vid to be begge writing, to the determination moitoes sint about to the village council,

that village council shall report that rejection or as the case may be send a copy of that objection to the District Council having jurisdiction over that village.

(6) The District Council may, if it considers that spot adjudication ought to be applied to land for which it has been requested, notwithstanding the determination by the village council made under subsection (2), after taking account of the rejection by the village assembly of, or the objection by an applicant for spot adjudication to that determination by the village council, direct that village council to apply spot adjudication to the land of the applicant.

with a directive issued to it by the District Council under this section.

Village or 50.-(1) Adjudication shall be District either-

of adjudication

- (a) village adjudication; or
- (b) district adjudication.
- (2) The responsibility for village adjudication is hereby vested in the village council and shall be conducted in accordance with the provisions of this Section or Section 54.
- (3) The responsibility for district adjucation is hereby vested in the District Council and shall be conducted in accordance with the provisions of section 56.
- Oistrict Council by not less than twenty

persons with interests in land to which village adjudication is being applied that the village adjudication is being applied improperly or unfairly, the District Council shall investigate the complaint and on being satisfied of the accuracy of the complaint, the District Council shall-

- (a) issue any directive which it considers necessary to the village council to correct and improve the process of village adjudication; or
- (b) issue a directive to the village council to-
- powers under the accessibilities of village doils biblibs spalliv adjudication;
 - (ii) send all records and

other information
specified in the
directive to the
District Council;

- (iii) cooperate fully with
 any officers whom the
 District Council shall
 authorize to apply
 central adjudication to
 the land to which
 village adjudication
 was being applied.
 - (5) The issuing of a directive under paragraph (b) of subsection (4) shall operate to-
- (a) terminate forthwith village adjudication;
- (b) apply central adjudication, to the land to which village adjudication was being applied.

- been applied to land under subsection be empowerd to-
- to tribing (a) re-examine;
- (b) cancel;
 - (c) revise;
- (d) add to;
- (e) make any other decisions which seem just on,

any determination made by any person or body in the village in connection with village adjudication of that land.

Determination 51.-(1) A village council may, to apply either of its own motion and shall, on village the application of not less than fifty adjudication willagers, recommend to the village assembly that a process of village adjudication be applied to the whole or a defined portion of village land available

for grants of customary rights of occupancy.

- (2) A recommendation made under this section shall-
 - (a) contain a brief statement of reasons for the recommendation;
 - (b) specify the approximate area
 of land to which it is
 proposed to apply village
 adjudication;
 - summarise the procedures to be followed in the process of village adjudication;
- (d) be posted in a public place
 within the village and
 explained to villagers so that
 the members of the village
 assembly may have notice of
 the recommendation not less

than fourteen days before the month of the m

- (e) be copied to the Commissioner.
- (3) Where the village assembly approves a recommendation made under this section, the village council shall, as soon as may be after that, begin the process of village adjudication.
- (4) A refusal by the village assembly to approve a recommendation of the village council shall not operate to bar any villager or group of villagers from applying for spot adjudcation to be applied to land in respect of which any of those persons have applied for a customary right of occupancy.

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Appointment 52.-(1) Where a village assembly and functions has approved a recommendation that a of village village adjudication process shall take adjudication place, the village council of that village adviser shall appoint a villager-

- known and respected for his (a) knoweldge of and impartial judgement about land matters in that village;
- (b) qualified in a prescribed discipline or profession or
- (c) any public servant appointed by the Commissioner at the request of the village council, to act as a village adjudication adviser;
- (b) of which any an official with responsibilities for matters of a local authority having jurisdiction in the

area where the land to be adjudicated is situate; or

- (e) a magistrate appointed by
 the Judicial Service
 Commission at the request
 of the village council to act
 as a village adjudication adviser.
 - (2) A village adjudication adivser shall be responsible to the village adjudication committee and shall assist that committee to implement and manage the village adjudication process and without limiting the generality of that function, shall-
- (a) carry out any lawful orders and directions from the village adjudication committee on any matters connected with the village

adjudication process which appear to the committee to be necessary;

- (b) draw to the attention of the committee any error or omission in any adjudication register at any time before it is completed;
- (c) make a claim or otherwise act on behalf of any person who is absent or under a disability if he considers it necessary to avoid injustice;
- dispute concerning the boundaries of or interests in land arising out of the village adjudication process through conciliation before it is referred to a village

adjudication committee;

he may be directed to implement a village adjudication process.

Village adjudication committee

53.-(1) Where a village assembly which has approved a recommendation that a village adjudication process shall take place, the village council shall establish a village adjudication committee, the members of which shall be elected by the village assembly.

(2) A village adjudication committee shall consist of not more than nine persons of whom not less than four persons shall be women, who shall serve for a term of three years and shall be eligible to be re-elected for one further term of three years.

- The functions of a village adjudication committee shall be to-
- and interest in land which is
 the subject of a village
 adjudication;
 - (b) set aside or make reservations of land or demarcate rights of way and other easements which it considers necessary for the more beneficial occupation of land;

in accordance with customary law any question referred to it by any person with an interest in land which is the subject of a

village adjudication;

- adjudication adviser or any person subordinate to him who is assisting in the village adjudication process upon any question of customary law as to which its guidance has been sought;
 - (e) safeguard the interests of women, absent persons, minors and persons under a disability;
 - in land in respect of which for any reason, no claim has been made.
 - (4) Each village adjudication committee shall elect one of its members to be chairman who shall

preside at all meetings at which he is present; and if at any meeting the chairman is absent, the members present shall elect one of themselves to preside over that meeting.

- (5) The quorum of a village adjudication committee shall, be five, of which at least two members shall be women.
- (6) In the event of an equality of votes, the chairman or other member presiding shall have a casting vote as well as an original vote.
- (7) Any decision of a village adjudication committee shall be signed by the chairman or other member presiding and the village adjudication adviser.
- (8) The village adjudication adviser shall be the executive officer for the village adjudication committee and shall keep the records of the committee.

- committee shall in the exercise of any of its powers under this section which involve a hearing comply with the rules of natural justice and, subject to that duty, may-
 - (a) hear evidence which would not be admissible in a court of law;
 - (b) call evidence of its own motion;
 - (c) use evidence contained in any official record or adduced in any other claim; and
 - (d) generally, determine its own procedures.
- (10) A village adjudication committee shall have jurisdiction over all claims made during the course of a village adjudication process and for this

purpose and in order to discharge the functions referred to in subsection (3), the chairman of that committee shall be legally compentent to administer oaths and to issue summonses, notices and orders requiring the atendance of any persons and the production of any documents which he may consider necessary for the carrying out of the village adjudication.

Procedures for 54.-(1) The chairman of a village village adjudication committee shall be adjudication responsible for ensuring that the procedures set out in this section and any other procedures that may be prescribed are complied with.

(2) Where village adjudication is to be applied to village land or a portion of that land, a notice shall be published and posted in a prominent place in the village and on the land which is to be adjudicated-

- (a) specifying the approximate area of land to be adjudication (the adjucation area);
- (b) requiring all persons who claim any interest in the land to attend a meeting of the village adjudication committee at a specified time and put forward their claims;
- (c) requiring any person who claims to occupy land within the adjudication area to mark or indicate the boundaries of the land in the manner and before the date which may be specified by the notice.
 - (3) On the specified date, the village adjudication committee shall hear and determine all claims made under paragraphs (b) and (c) of subsection (2).

provisions of section 55, become a final

- (4) The village adjudication committee may adjourn any hearing into any claim and direct the village adjudication adviser to conduct further investigations into that claim.
 - (5) In hearing and determining any claim, the village adjudication committee shall use its best endeavours to mediate between and reconcile parties having conflicting claims to the land.
 - (6) The village adjudication committee shall cause to be prepared a provisional adjucation record in the prescribed manner of the claims to the adjudicated land which it has determined under subsection (3) and shall post that record in a prominent place within the village.
- shall, unless an appeal is made under the provisions of section 55, become a final

has been published and shall thereupon become a part of the register of village

(8) A provisional adjudication record shall, where any appeal has been made under section 55, become a final adjudication record thirty days after the final disposition of that appeal.

Appeals

55.-(1) Any person who is aggrieved by a determination of a village adjudication committee may, within thirty days of the publication of the adjudication record, appeal to the village land council against that determination.

- (2) The Village Land Council shall, in hearing any appeal-
- comply with all the powers and comply with all the powers applicable to a tada avia liada lon village adjudication committee; and a committee; and a committee; and a committee;
 - (b) reach any decision which

appears to it to be just in all the cirumstances, and, without limiting of the generality of that power, may-

- (i) amend the adjudication record;
- (ii) correct any error in the adjudication record;
- (iii) direct that the village adjudication adiviser conduct further investigations into the subject matter of the appeal.
- (4) Where the village land council propose to make a decision which may adversely affect the interests of any person in the adjudication area who has not appealed, the Council shall give that person an apportunity to be heard before its shall make that decision.

(5) Any applicant or person referred to in subsection (4) aggrieved by a decision of the village land council given under this section may, with the leave of the court, appeal to that court against that decision and the court may make any decision or order which it considers just in all the circumstances and to that end may make any rectification of the provisional adjudication record which it considers will achieve a just result.

District adjudication

56.-(1) Where the District Council has issued a directive under paragraph

(b) of subsection (4) of section 50 or where a village assembly has determined that district adjudication shall be applied to land within the village, the provisions of this section shall apply to the process of district adjudication.

- (2) The District Council shall appoint a public officer to be an adjudication officer for that village land, and that officer shall be in charge of and shall exercise general supervision and control over the adjudication process and without limiting the generality of that power, that officer may-
 - (a) where a village adjudication adviser has been appointed-
 - (i) give that adviser orders and directives which that adviser shall comply with;
- that beautiful (ii) dispense with the services of that being a services of that being a services of that adviser; services adviser.

- (b) where a village adjudication committee has been elected-
- members to that committee;
- (ii) remove all or any elected members from that committee;
- (iii) arrange for the election of new members to that committee by the village assembly;
- (iv) nominate a chairman
 of the committee who
 will replace the
 chairman elected by
 that committee;
- (v) appoint an executive officer for the

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- committee has not been elected, appoint a village adjudication committee, the composition, powers and procedures of which shall, with the exception of paragraphs (a) and (b) of subsection (3) of section 53 comply with the provisions of that section;
- (d) exercise those powers of the adjudication committee-
- to the exclusion of that discommittee, set out in paragraphs (a) and (b)

- section 53; and
- (ii) in conjunction with the committee set out in paragraphs (a) and (b) of subsection (3) of section 53;
- (e) refer any matter to a village adjudication committee for its opinion;
- (f) exercise, to the exclusion of the chairman of a village adjudication committee, the responsibility for ensuring compliance with subsection (2) of section 57.
- (g) exercise, to the exclusion of a village adjudication committee, the powers set out in subsections (3), (4)

- and (5) of section 54, and accordingly substitute a reference to himself for a reference to a village adjudication committee in a notice published under subsection (2) of section 54.
- (h) prepare, to the exclusion of a village adjudication committee, the provisional adjudication record under subsection (6) of section 54;
- (i) issue any orders to any officer subordinate to him and to a village adjudication committee which he thinks necessary for the carrying out of the process of adjudication;
- (j) at any time before a

provisional adjudication record becomes final, corect
any error or supply any omission occuring in that provisional record.

(3) An adjudication officer shall have jurisdiction in all claims made under a process of central adjucation relating to interests in land in an adjudication area, with power to determine any question that needs to be determined in connection with any claims and for that purpose he shall be legally competent to administer oaths and to issue summonses, notices or orders requiring the attendance of any persons or the production of any documents which he may consider necessary for the carrying out of that adjudication. 2 morns lu (8) bns

- (4) Any person who has made a claim under a process of District adjudication who is aggrieved by any act or decision of an adjudication officer done or taken under the process of District adjudication may, within thirty days of the publication of a provisional adjudication record, appeal to the Commissioner and may further appeal to the High Court.
- (5) On any appeal which is made under subsection (4), the court may make any decision or order which it may consider just in all the circumstances and to that end it may make any rectification of the provisional adjudication record which it considers necssary to achieve a just result.
- (6) The provisions of subsections (7) and (8) of section 54 shall apply to a

provisional adjudication record prepared by an adjudication officer under this section.

Principles of adjudication

- 57.-(1) In preparing the provisional adjucation record, a village adjudication committee, or as the case may be, an adjudication officer, if it or he is satisfied that-
 - (a) a person is and has been or his predecessor in title was in peaceable, open and uninterrupted occupation of village land under customary law for not less than twelve years, shall determine that person to be entitled to a customary right of occupancy;
 - (b) a person is in occupation of

village land allocated to him or his predecessor in title during Operation Vijiji, shall determine that person to be entitled to a customary right of occupancy;

- (c) a group of persons are and have been in peaceable, open and uninterrupted occupation of or have similarly used the village land for pastoral purposes for not less that twelve years, shall determine that group of persons to be entitled to a customary right of occupancy over that land;
- (d) a group of persons are in occupation of or have been using for pastoral purposes, village land allocated to

them during Operation Vijiji, shall determine that group of persons to be entitled to a customary right of occupancy over that land;

(e) a person or group of persons are in peaceable, open and uninterrupted occupation of land or are similarly using land under the arrangement or as a result of a transaction whether under customary law or any written law relating to land, and whether that occupation can be evidenced by a document in writing or not which does not fall within any of the above categories of land occupancy, shall determine

To quory and extent of that occupancy and declare that person or group of persons to occupy that land under the type of occupancy so determined, whether it be a customary right of occupancy or a derivative right;

or a non-village organisation are in occupation of or are using village land without any right or interest so to be, shall determine those shall determine those persons or non-village organisation to be and to the persons or non-village and to be personed occupiers, but to spingly permitted to remain on the spingly ball to spingly permitted to remain on the spingly ball to spingly permitted to remain on the

licencees;

- (g) a person or group of persons are entitled to an interest in village land, whether under customary law or otherwise, not amounting to occupation under customary law, or under a derivative right, shall determine the nature, incidents and extent of those interest to enable it to be recorded in the name of the person or group or persons entitled to benefit from it;
 - (h) the village land is entirely free of any occupation or use or any right of occupation or use by any person or group of persons, shall determine that land to be communal

village land;

- free of any occupation or use by any person or group of persons shall determine that land to be communal land;
 - (j) the land alleged to be village land is not village land, shall declare that land to be general land.
 - (3) In making any determinations under subsection (2), a village adjudication committee or as the case may be an adjudication officer shall have regard and treat the rights of women and the rights of pastoralists to occupy or use or have interest in land not less favourably than the rights of men or agriculturalists to occupy or use or have interests in land.

(4) In determining whether occupations of land has been peaceable,

any order, declaration or scheme issued or made under the Town and Country Planning Ordinance, which purports to alter, amend or add to the incidents of any deemed right of occupancy or other right to occupy land of any person so as to render any aspect of that occupation unlawful;

bott med (b) a person occupying land in to not appear of an urban or peri-urban area beique of the state will or sufferance of or a trespasser (relative to a grant of persons of persons of processing to the state of persons of processing the state of persons occupying land in the person occupy

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person or organisation having a title to that land) but whose occupation is recognised and accepted as being inaccordance with the customs of the community of which he is a part, shall be deemed to be in peaceable open and uniterrupted occupation of that land;

(c) it shall not be necessary that occupation is continous provided that when land is not occupied by a person or group of persons claiming peaceable, open and uniterrupted occupation of that land, it is not occupied by any other person or group of persons claiming

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peaceable open and uninterrupted occupation.

(5) A village adjudication committee or an adjudication officer may record that two or more persons or groups of persons are co-occupiers and

users of land, whether those persons or groups of persons have claimed to be co-occupiers or are disputing occupation or use of that land and where that determination is made, the committee or adjudication officer as the case may be, shall determine and record the nature, incidents and extent of that co-occupation and whether those persons and group of persons are joint occupiers or occupiers in common as provided for in Part XII of the Land Act, 1999 relating to co-occupancy whose right

between themselves are governed by customary law.

- (6) References to 'land' in this section are reference to land the boundaries of which have been agreed to by the parties claiming an interest in that land and contigous land or have, in the absence of that agreement, been determined by a village adjudication committee or an adjudication officer.
- adjudication record has been completed, it shall be signed by the Chairman and executive officer of the village adjudication committee and by each person or an authorised representative of each person or group of persons or non-village organisation whose interests in land have been adjudicated.

Land sharing
arrangements
between
pastoralists
and
agriculturalists

58.-(1) Where, in respect of any land the subject of adjudication, the village adjudication committee or, as the case may be, the adjudication officer is satisfied that there is a dual use of the land between groups of persons using the land for pastoral purposes and groups of persons using the land for agricultural purposes and that both groups claim to be using that land in accordance with customary law applicable to their respective uses, the committee or, as the case may be the adjudication officer shall-

(a) determine and record the nature, extent and incidents of each use and so far as it is possible to do so, the length of time that each group has

used or claimed the use of that land for their respective uses;

- (b) where the village adjudication committee or the adjudication officer is satisfied that the groups of persons so using the land have in the past and are likely to continue in the future to carry out their respective uses of the land in co-operation with each other, he or as the case may be prepare an arrangement for that continued dual use which records-
 - (i) the rights to the
 use and
 occupation of
 the land by each
 group as
 recognised by
 each group; and

arrangements
for resolving
any disputes
between the
dual uses
adopted and
used by those
groups;

(c) where the village adjudication

Committee or an adjudication officer is satisfied that the groups of persons using the land are in continous dispute about the uses of the land, it or he as the case may be, shall-

(i) record the rights to the use and occupation

of the land claimed by each group;

and

(ii) prepare a draft sharing arrangement for the continued dual use of the land either for a limited period or indefinite ly based

on the claimed uses of the land modified so as to reduce the likelihood of disputes; and (iii) discuss the arrangem ent with each group of persons or their

represent

atives with a view to obtaining their agreemen t to the said arrangem ent or the said arrangem ent modified to take account of the views of those groups their

represent atives; and (iv) adopt the draft arrangem

ent as a

Scheme.

- (2) An arrangement prepared or adopted under subsection (1) shall be known as a "land sharing arrangement" and shall provide-
 - (a) for each group using the land to which it relates, rights to the occupation and use of that land based on the provisions on easements and analogous rights and on co-occupancy contained in Parts XI and XII of the Land Act, 1999, respectively;

- (b) arrangments for the resolution by a ioint mediation panel composed of equal members of each group, of disputes about the rights so provided for by the scheme.
- (3) A land sharing arrangement may, notwithstanding the provisions of Part XI of the Land Act, 1999, provide that different groups of persons may occupy or use different parts of the land the subject of the scheme exclusively for specified purposes or for a specified period.
- (4) A land sharing arrangement shall be registered in the Village Land Registry and in the District Land Registry.

suits

Staying of 59.-(1) Except with the consent of the chairman of the village adjudication committee or where district adjudication is taking place, of the adjudication officer, no person shall institute any civil action or proceedings of any kind concerning land or any interest in land

which is the subject of an adjudication process until the adjudication record is final.

- (2) Where any action or proceedings has begun before the publication of a notice under section 51 or section 54, they shall be discontinued unless the chairman of the village adjudication committee or, as the case may be, the adjudication officer, having regard to the stage which the action of proceedings have reached, otherwise directs.
 - (3) Any person who is aggrieved by a refusal of the chairman of the village adjudication committee or, as the case may be, the adjudiction officer to give his consent under subsection (1) or make a direction under subsection (2), within fourteen days of the refusal, may appeal to the village land council against that refusal and may further appeal to the Court having jurisdiction over Land matters.

PART V DISPUTE SETTLEMENTS

60.—(1) For the purposes of this Part, every village shall establish a Village Land Council to mediate between and assist parties to arrive at a mutually acceptable solution on any matter concerning village land.

(2) Where a village council establishes a village land council, that council shall consist of seven persons of whom three shall be women who shall be-

(a) nominated by the village council; and

- (b) approved by the village assembly.
- (3) Where a person is not approved as a member of village and council or, a member of a council resigns dies or falls within one of the categories set out in subsection (4), the village council shall nominate another person to be a member of the village land council and that person shall be required to be approved in accordance with subsection (2).

Elders Council Panels

- (4) In determining persons to be nominated as members of the village land council, a village council shall have regard to the standing and reputation of a nominee in the village as a person of integrity and with knowledge of customary land law.
- (5) No person shall be eligible to be nominated as a member of the village land Council or continue as a member of a traditional village land council if he is-
 - (a) not ordinarily resident in the village in which the village land council is to function;
 - (b) a member of the National Assembly;
 - (c) a magistrate having jurisdiction in the district in which the village land council is to function is situate;
 - (d) a person under the apparent age of eighteen years;
 - (e) a mentally unfit person;
 - (f) a person who has been convicted of a criminal offence involving dishonesty or moral turpitude;

- (g) a person who is not a citizen.
- (6) A person who falls within one of the categories set out in subsection (5) while serving as a member of a the village land council shall automatically cease to be a member of that council but where that person was acting as a mediator in any case, then, except where the provisions of paragraph (e) or (f) of subsection (5) apply that person may continue to act as a mediator in that case until the process of mediation has been concluded.
 - village land council shall, unless he sooner resigns, dies or falls within a category set out in subsection (5) serve for three years and shall be eligible for reappointment which shall comply with the provisions of subsection (2) and (3).
 - (8) An appointed village land council shall elect one of its members to be convenor of the Council who shall keep the records of the council and preside at all meetings at which he is present; and if at any meeting the convernor is absent, the members present shall elect one of themselves to preside at that meeting.

- (9) The quorum at a meeting of the village land council shall be four persons of whom at least two shall be women.
- (10) In the event of an equality of votes, the chairman or other member presiding shall have a casting vote as well as an original vote
 - (11) The provisions of section 10 shall apply to the members of a council.

Functions of the village land council

of land residing or working in a village or the village council or a non-village organisation within the village or a person coming within an agreement made under section 11 or an arrangement made under section 58 has a dispute with any other villager or person residing or working in a village or with the village council or a non-village organisation within the village or a person coming within an agreement made under section 11 or an arrangement made under section 11 or an arrangement

made under section 58 over any matter concerning village land within that village or land to which sections 11 or 58 apply, all parties to that dispute may agree to call in the services of the village land council or its member to mediate between and assist those parties to arrive at a mutually acceptable solution to the dispute;

- (2) Where the parties to a dispute referred to in subsection (1) agree to call in the village land council, the convenor of the village land council shall, after discussing the matter with the parties to the dispute, either-
 - (a) convene a meeting of the village land council; or
 - (b) appoint one or more members of the village land council, to act as mediators between the parties to the dispute.
- (3) Where the convenor or any member of the Village Council becomes aware of or is informed of a dispute as referred to in subsection (1), the convenor shall use his best endeavours to persuade all parties to the dispute to

make use of the services of the village land council or one or more of its members to act as mediators in the dispute.

- (4) The village land council shall exercise its functions of mediation in accordance with-
 - (a) any customary principles of mediation;
 - (b) natural justice in so far as any customary principles of mediation do not already provide for them;
 - (c) any principles and practices
 of mediation in which the
 members may have received
 any training.
- (5) A member of a village land council shall not act as mediator in any case in which he or a member of his immediate family has interest and for the avoidance of doubt, a member of the village land council who is a member of or an employee of the village council or any non-village organisation which is in-

volved in a case, the subject of mediation by the council, is deemed to have an interest in that case.

(6) No person or non-village organization shall be compelled or required to use the services of the village land council for mediation in any dispute concerning village land.

References of disputes from

- 62.-(1) Where the parties or any of them do not accept the conclusions council to court of any mediation into a dispute or wish to cease to make use of the services of the Village Land Council, they may refer the dispute to a court having jurisdiction over the subject matter of the dispute.
 - (2) The following courts are hereby vested with exclusive jurisdiction, subject to the provisions of Part XIII of the Land Act, 1999, to hear and determine all manner of disputes, actions and procedings concerning land, that is to say-
 - (a) the Court of Appeal;
 - (b) the Land Division of the High Court:
 - (c) District Land and Housing Tribunal:
 - (d) Ward Tribunal;
 - (e) Village Land Council.

IV TRACTOR ACT VI

- MISCELLANEOUS PROVISIONS

Offences Vals 63.+(1) Any person who-

- (a) knowingly makes any false statement, orally or in wanted writing, in connection with any disposition or other transaction affecting land or any other matter arising under this Act; or
 - (b) knowingly gives any false information or makes any false statement, either orally or in writing, in connection ent to vatue vas with any call for information mamaziobna or in connection with any otni notingitali into the vascommission of any offence document OF

under this Act; or

- (c) fraudulenty procures-
 - (i) the registration or issue of any certificate of occupancy, customary certificate of occupancy or any other document or instrument relating to land; or
 - (ii) the making of any entry or the endorsement or any matter on any such document or

referred to in subparagraph (1);

- or amendment
 of any of the
 aforesaid
 documents or
 instruments or
 entries or
 endorsements;
- (d) fraudulently alters,
 adds to, erases,
 defaces, mutilates or
 destroys any
 documents or
 instrument relating to
 land or any entry on or
 endorsement of any

such document or instrument;

(e) suppresses or conceals from the Commissioner, the Registrar, any authorized officer or any officer of a village council exercising powers under this Act or assists or joins in so doing, any material document, fact or matter,

commits an offence and upon conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or to both, the fine and imprisonment.

(2) Any person who without

document as required under this Act commits an offence and upon conviction is liable to a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months or to both, the fine and imprisonment.

(3) Any person who unlawfully occupies land commits an offence and upon conviction is liable, to a fine not exceeding ten thousand shillings, and in the case of a continuing offence to an additional fine not exceeding five hundred shillings for every day during which the offence continues.

(4) Any person who wrongfully obstructs or encroaches on a public right of way and who does not within the time specified in any notice served on him remove that obstruction or cease that

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encroachment commits an offence and upon conviction is liable, to a fine not exceeding ten thousand shillings and in the case of a continuing offence, to an additional fine not exceeding two hundred shillings for every day during which the offence continues.

- (5) Any person who wilfully-
 - (a) delays; or
 - (b) obstructs; or
 - (c) hinders; or
 - (d) intimidates; or programmed from
 - (e) assaults,

any person authorized under this Act to enter and inspect any land in the lawful exercise of power in that behalf commits an offence and upon conviction is liable, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both, the fine and imprisonment.

remove that obstruction or cease that

- (6) Any person who, under this Act, whether generally or for a specific function, in the course of any official function or otherwise, unlawfully or with force enters on the land of any person or while on land, wilfully commits any damage to the land or anything on the land, whether naturally on the land, or stock owned by any person using the land or crops planted or buildings erected on the land commits an offence and upon conviction is liable to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding three months or to both, the fine and imprisonment.
 - (7) Where a court has convicted any person of an offence under this section and the commission of that offence

enabled that person to obtain or retain or regain any interest in land which he would otherwise not have been able to obtain, retain or regain, the court may in addition to any punishment provided for by this section imposed on that person, make any order in relation to that interest in land so obtained, retained or regained by that person as appears to the court necessary to ensure that that person does not profit by the offence of which he has been convicted.

Corrupt transactions 64.-(1) Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect to any grant of a customary certificate of occupancy, or any disposition, or any contract for any of transaction which was obtained or induced by any corrupt

action, on the part of any government or public or local government official and such a transaction is hereby declared to be and to have been from its inception an illegal transaction, void and having absolutely no legal effect.

- (2) For purposes of this section, a transaction shall be taken to be affected or tainted by corruption when either-
- (a) any party involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption and and all final appeals arising from that conviction have been concluded; or mainsanagement
- any civil servant or other public official is interdicted,

bas label interest, from his post on the grounds that he has been engaged in corrupt actions and that these actions involved that transaction; or

- (c) an investigatory body reports
 that it is satisfied or that
 transaction was procured by
 corrupt practices.
- (3) Any person occupying land which he obtained as a consequence of participating in any of the transactions covered by subsections (1) and (2) shall be liable to forfeit that land to the President without any entitlement to any compensation.
- transaction covered by this section is

void, a person occupying land as a consequence of that transaction shall be and shall always have been obliged to comply with all the terms and condtions of the transaction as if it had been a valid transaction and shall be liable to all the remedies which may be applied to a person who fails to comply with the terms and conditions of a valid transaction in addition to any penalties which may be applied under this section.

Regulations

65.-(1) The Minister may make regulations generally for the better carrying into effect of the purposes and provisions of this Act and without prejudice to the generality of the foregoing, such regulations may prescribe-

- (a) the forms to be used in connection with this Act;
- (b) the procedures to be followed by village adjudication committees, village adjudication advisers and other officers exercising powers under Part IVC of this Act;
 - (c) procedures to be followed
 with respect to the making of
 any claim for compensation
 and the payment of any
 compensation under this Act;
 - (d) the alteration from time to time of the amount which may be advanced by way of a small mortagage;
 - (e) the form and scope of joint village land use agreements;

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- (2) A village council may, with the approval of the District Council and subject to any general directive of the Minister, make by-laws for the better management and administration of land matters within the jurisdiction of the village land.
- (3) The procedure for making bylaws under subsection (2) shall be as prescribed *mutatis mutandis*, by the provisions of Part VI of the Local Government (District Authorities) Act, 1982.

Translation

66.-(1) The Minister shall as soon as practicable after the enactment of this Act cause this Act to be translated into Kiswahili and such translation shall be published in the Gazette and in such other manner and form as will enable

bus tionuo to such translation. levorage

- published in the Gazette cause to be incorporated into the Kiswahili version of this Act and published in the Gazette any amendments made to this Act.
 - (3) Any form prescribed under this Act shall be made available to the members of the public in both English and Kiswahili.

Passed in the National Assembly on the 11th February, 1999.

Clerk of the National Assembly

DAMlawar.

Act cause this Act to be translated into Kiswahili and such translation shall be published in the Gazette and in such other manner and form as will enable